

# ANNUAL REPORT

2019/20



*Presented to the House of Representatives pursuant to section 44(1) of the Public Finance Act 1989*

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## *This year at a glance*

# 96%

of feedback from other agencies overall  
good to excellent

Increase of 4% from 2018/19

# 3,875

CPD-compliant hours  
delivered to GLN lawyers

Forecast range 3,500 to 4,000 hours

# 62%

of appeals brought by the Crown  
concluded in favour of the Crown

No change from 2018/19

# 27%

of appeals brought by the defendant  
concluded in favour of the defendant

Decrease from 31% in 2018/19

# 5,255

Prosecutions completed by the  
Crown Solicitor Network

Increase of 2% from 2018/19

# 235,973

Hours of service provided by the  
Crown Solicitor Network

Increase of 3% from 2018/19

# 15.5%

Gender pay gap

Decrease from 23.5% in 2018/19

# 0

Health and safety – reported accidents  
and lost-time injuries

No change from 2018/19

# OVERVIEW FROM THE SOLICITOR-GENERAL

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Almost every aspect of New Zealand life has been significantly impacted by the challenges of Covid-19 during the past year. This includes our work at Crown Law. Despite this disruption, we have continued to work with professionalism, resilience and urgency, where required providing legal support to all areas of the Crown and responding to the challenges of the pandemic, which has raised unprecedented legal issues.

With the foundations we put in place over the past 3 years, we were able to implement our business continuity plan to ensure Crown Law continued to run smoothly in each of the alert levels. This included standing up an Incident Management Team and enabling the organisation to work remotely. At the same time, we continued to lead the network of government lawyers and support the government's overall pandemic response.

We have delivered on our plan to implement a new System Leadership Group within Crown Law, on a 2-year trial basis, to provide strategic legal advice on issues of Crown-wide importance. The System Leadership Group had an immediate impact in co-ordinating the government's legal response to Covid-19. The System Leadership Group was instrumental in connecting with the network of government lawyers to identify legal issues as the government developed its initial response, sharing relevant information across the networks and co-ordinating the government's overall legal advice.

In addition to providing and co-ordinating various legal advice, Crown Law also stood up litigation teams at short notice and allowed swift determination by the independent Courts of critical legal issues relating to the Covid-19 measures and decisions.

I am incredibly proud of the work we have done to support the government and New Zealanders through these difficult times. The way we have worked collaboratively with one another and stayed true to our values and ways of working is extremely satisfying and has demonstrated that we are making good progress against our vision of collaborative, indispensable legal service.

In addition to addressing the impacts of Covid-19 and supporting the government's response, we also continued to deliver our business as usual advice and representation to a high standard and made progress against our strategic objectives.

Recent results from our annual satisfaction survey, completed by our legal colleagues (Chief Legal

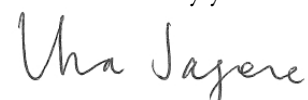
Advisors) in other agencies, show that overall satisfaction with our services increased to 96% from 92% in 2018/19. We have continued to maintain our high standards and have either maintained or improved from last year in each sub-category we measure. The sub-categories that have improved include understanding our colleagues' business, responsiveness, value for money, clarity of expression, timeliness, communication and trust and confidence.

In December 2019, we signed a new collective agreement with the PSA, which included, for the first time, a remuneration framework delinking performance from pay. This is an interim step while we develop a new remuneration approach. In establishing the interim remuneration framework, we continued to focus on reducing our gender pay gap (in line with our gender pay action plan), which is now at 15.5% compared with 23.5% in June 2019 and 31.5% in June 2018. At an individual role level, there is little difference between the average pay of men and women, with the average women's salary being more than the average men's salary in several roles.

This year, we have also worked with other agencies to ensure that we have the right funding in place for Crown prosecutions. In Budget 2020, the government announced increased funding of \$4.140 million per annum to address increases in demand in Crown prosecutions.

We have also continued to focus on improving our oversight of departmental prosecutions. The Public Prosecution Unit continues to collect and review monthly prosecution data that is being reported by all prosecuting agencies and the Ministry of Justice. We have refreshed the Public Prosecution Advisory Board and initiated four in-depth reviews of departmental prosecution functions. The final report on the first of those reviews is due to be completed shortly, whilst the most recent and largest is scheduled for completion by the end of 20/21 financial year.

I feel privileged and fortunate to lead Crown Law and the government's legal networks. I extend my gratitude and thanks to everyone in the Crown Law Office, the wider network of government lawyers and Crown Prosecutors for their hard work, commitment and support in what has been an extraordinary year.



Una Jagose QC  
Solicitor-General and Chief Executive

# PERFORMANCE FRAMEWORK

## CROWN LAW STRATEGY 2017 – 2021

### COLLABORATIVE, INDISPENSABLE LEGAL SERVICE

#### VISION

#### OUTCOMES

**Demonstrably**  
better government  
decisions

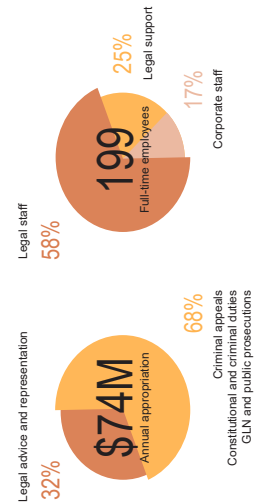
**Strengthened**  
influence of the  
rule of law

**Improved**  
criminal justice

#### GOALS

- 1 Enable government to pursue its policy choices lawfully by providing quality legal services
- 2 Better serve the Crown by leveraging the collective strength of the Government Legal Network
- 3 Increase New Zealanders' confidence in our legal system and lawfulness of decisions
- 4 Improve the quality, consistency and decision making of public prosecutions
- 5 Ensure the quality of Crown prosecutions
- 6 Contribute leadership to a streamlined, efficient mutual assistance and extradition regime
- 7 Ensure the quality of the conduct of criminal appeals

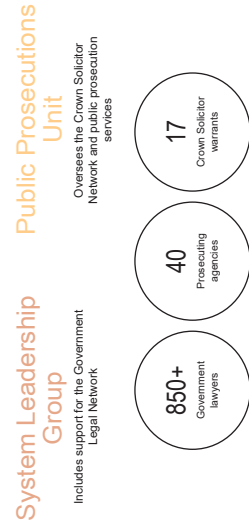
WHO WE ARE – figures as at 30 June 2020



#### AREAS OF EXPERTISE

- TREATY OF WAITANGI
- CRIMINAL LAW
- HUMAN RIGHTS
- CONSTITUTIONAL LAW
- PUBLIC LAW
- REVENUE LAW

#### SYSTEM OVERSIGHT



#### MISSION

**LEGAL EXPERTS**  
Ngā kaitiaki o te ture

**KAITIAKI OF THE RULE OF LAW**  
Kaitiaki whakatau i te ture

**SYSTEM LEADERS**  
Ngā kaihautū

# THE DIFFERENCE WE MAKE

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## *Who we are and what we do*

Crown Law plays an important role in increasing public trust and confidence that decisions made by government are allowed by law. We do this through providing legal advice and representation services to government departments and government Ministers. Our work is focused in the areas of criminal, public and administrative law.

We are responsible for assisting the Solicitor-General with the conduct of criminal appeals and the supervision and oversight of public prosecutions.

We provide strategic leadership across the wider government legal system and support the Government Legal Network (GLN) and the Solicitor-General's leadership of the legal profession across the Crown.

Our vision of collaborative, indispensable legal service is a vision for how we work with each other and our colleagues across the public service. With our partners in the justice sector, we work together to make New Zealand safer and to deliver accessible justice services and better outcomes for all New Zealanders.

## *Delivering positive outcomes for New Zealand and New Zealanders*

Crown Law provides value to the Crown legal system in several roles:

### *Ngā kaitiaki o te ture – legal experts*

We are experts in public, criminal, constitutional and te Tiriti o Waitangi law, enabling government to pursue its policy objectives according to law.

### *Kaitiaki whakatau i te ture – kaitiaki of the rule of law*

We support the Law Officers (the Attorney-General and Solicitor-General) to determine the Crown's view of the law.

### *Ngā kaihautū – system leaders*

We provide leadership for the networks of Crown Solicitors, public prosecuting agencies and in-house government lawyers.

## *Our strategic direction*

We have three outcomes that sit at the heart of what we do. It is by achieving these outcomes that we will deliver on the promise of our vision of collaborative, indispensable legal service.

These outcomes enable us to set priorities for our work, identify goals and help shape our performance measures to monitor progress against our goals as well as understand and demonstrate the value we are providing to New Zealanders through our work.

**Demonstrably better government decisions** refers to our ambition for government lawyers right throughout the State sector to be sought out by decision makers as partners who add real value. They help with identifying lawful options, spot opportunities and solutions to problems, identify legal risk and management options and provide advice in policy and business areas in which those lawyers are expert.

This will mean successive governments are best placed to implement their policy choices lawfully and with better identification and management of risk and opportunity. It should, over time, result in Crown conduct that is less susceptible to successful challenge, increased transparency of process and compliance with the rule of law and, therefore, a more robust democracy.

### **Strengthened influence of the rule of law**

refers to our role in upholding respect for New Zealand's legal and constitutional framework, including the Treaty of Waitangi and the New Zealand Bill of Rights Act 1990. Governments have legitimacy in our democracy because they are subject to the law of the land like everyone else. New Zealand's reputation on a world stage is also largely dependent on how its domestic governance is seen to respect and protect the rule of law and democratic institutions.

New Zealanders have access to fair and impartial resolution processes, including the courts, through which they can access the checks and balances on the use of executive power. Strengthening the influence of the rule of law will be demonstrated by greater public confidence in the systems that ensure governments act according to law.

**Improved criminal justice** refers to Crown Law's vital role in the justice sector, including: enhancing the quality of Crown prosecutions (through the network of Crown Solicitors who prosecute the most serious offences); improving the quality, consistency and decision making of the approximately 140,000 public non-Crown prosecutions every year; contributing leadership to a streamlined and efficient mutual assistance and extradition regime; and ensuring the quality of the conduct of criminal appeals.

A diagram of our strategic direction is found on page 5.

## **Success at Crown Law is not just about what we do but how we do it**

Our ways of working are supporting a shift in culture that embraces the value of all of the work carried out across Crown Law:

- We take pride in all we do.
- We value our differences.
- We look after the mana of other people.
- We recognise our impact on others.
- We care about each other.

## **Contribution to the wellbeing domains**

Crown Law aims to increase trust in government through its decisions and actions by:

- providing our core legal and constitutional services and functions to a high quality;
- enhancing the quality of Crown and departmental prosecutions;
- strengthening and promoting the rule of law; and
- better supporting decision makers across the sector.

Through this work, we contribute to the civic engagement and governance domain, which is defined under the Living Standards Framework issued by The Treasury as "People's engagement in the governance of their country, how "good" New Zealand's governance is perceived to be and the procedural fairness of our society".

### **Leadership of the Crown legal system**

*For more than 140 years, Crown Law has been responsible for supporting the Attorney-General and the Solicitor-General in the performance of their statutory and other functions as Law Officers of the Crown and assisting the Solicitor-General with the conduct of criminal appeals and the supervision and oversight of public prosecutions.*

*In New Zealand, the Attorney-General is the senior Law Officer of the Crown and is a Government Minister, with ministerial responsibility for Crown Law and the Parliamentary Counsel Office. The Attorney-General has principal responsibility for the government's lawful conduct and administration of criminal law.*

*The Solicitor-General is the junior Law Officer and is the government's chief legal advisor and advocate in the courts. The Solicitor-General is a government official, the Chief Executive of Crown Law and the professional head of lawyers in government.*

*The Law Officers, the Attorney-General and the Solicitor-General, have constitutional responsibility for determining the Crown's view of what the law is and ensuring that the Crown's litigation is properly conducted.*

# OUR ORGANISATION

## Leadership and governance

Crown Law's Leadership Team is responsible for the overall direction and strategy of the department. As at 30 June 2020, the Leadership Team comprised six members: Una Jagose QC (Solicitor-General and Chief Executive), Sophie Mexsom (Deputy Chief Executive Strategy and Corporate), Virginia Hardy (Deputy Solicitor-General Attorney-General Group), Charlotte Brook (Acting Deputy Solicitor-General Criminal Group), Katie Elkin (Deputy Chief Executive System Leadership Group) and Aaron Martin (Deputy Solicitor-General Crown Legal Risk Group).

Crown Law's Governance Framework distinguishes between strategic leadership and operational management and helps to ensure Crown Law's resources are effectively managed.

The Leadership Team is supported by several other committees including the Operational Management Committee (OMC), the Professional Standards Committee (PSC), the Health and Safety Panel and the Assurance and Risk Committee (ARC). The OMC supports the Leadership Team and line managers in the management of the day-to-day operations of Crown Law through operational decision making and monitoring of compliance with processes and procedures. The PSC is dedicated to ensuring professional standards of best practice are used within Crown Law. The Health and Safety Panel monitors health and safety risks and associated work programmes and makes recommendations to Crown Law's Leadership Team.

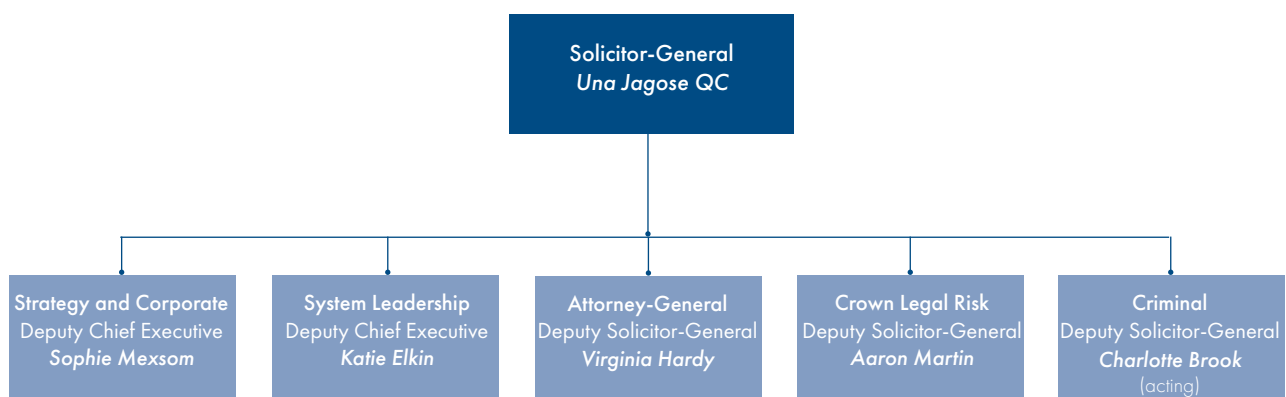
## Managing risk

The Leadership Team is responsible for ensuring that key business, legal and operational risks are identified and appropriate controls and procedures are in place to mitigate or effectively manage those risks. Crown Law operates a Risk Assessment Framework that helps us to assess both legal and operational risk (including technology, security, privacy, fraud and corruption, procurement and business risk). Risk is assessed by determining the likelihood of an event occurring and considering the impact of the event's consequences.

The Leadership Team has identified six strategic risks (health and safety, sustainability of Crown prosecutions, culture and behaviours, workforce capacity and capability, information security and delivery), which are monitored and reviewed on a regular basis.

The ARC is in place to advise the Solicitor-General and Leadership Team on various topics such as governance, risk management, internal controls, compliance and external reporting. A primary benefit of the ARC is its independence. As at 30 June 2020, the independent committee members appointed were John Whitehead (previously Secretary to The Treasury) as ARC Chair and Becky MacNeill (Deputy Chief Executive Organisational Performance – Ministry for Culture and Heritage). Crown Law's Deputy Chief Executive Strategy and Corporate is the third ARC member.

**Figure 1: Crown Law organisational structure**





## Structure

Crown Law's organisational structure is based on its core service lines and is spread across five groups that encompass one or more teams. Figure 1 notes the structure as at 30 June 2020.

The Attorney-General Group provides advice on constitutional and human rights issues and Treaty of Waitangi claims and issues.

The Crown Legal Risk Group provides legal advice and representation on public law issues excluding those addressed by the Attorney-General Group.

The Criminal Group conducts criminal appeals from Crown prosecutions, provides oversight of public prosecutions and provides advice on criminal law issues including criminal mutual assistance and extradition matters.

The System Leadership Group (SLG) provides leadership across the wider government legal system, delivers strategic advice and resources relevant to many or all government departments and supports the Government Legal Network by building capability. The SLG includes Crown Law's policy function.

The Strategy and Corporate Group is responsible for leading Crown Law's strategic direction, monitoring performance and ensuring good organisational governance, working collaboratively across business and legal teams to provide essential business functions.

## Funding

Crown Law is funded by Vote Attorney-General. Funding for 2019/20 was \$74.3 million, as outlined in the Supplementary Estimates 2019/20, which covered the following:

- \$23.0 million (32% of the Vote) for the provision of legal advice and representation services to government departments and Crown agencies on a full cost-recovery basis.
- \$50.7 million (68% of the Vote) for the Law Officer Functions (multi-category appropriation), which covered:
  - conducting criminal appeals arising from Crown prosecutions (\$3.9 million);
  - developing the collective capability, effectiveness and efficiency of government lawyers (the GLN) (\$1.1 million);

- providing assistance to the Principal Law Officers in the exercise of their functions and providing advice on constitutional, criminal law, mutual assistance and extradition matters (\$5.6 million); and
- providing supervision of national Crown prosecution services and oversight of public prosecutions (\$40.1 million).

Crown Law also has a permanent legislative authority for forecast capital expenditure, which was \$0.6 million in 2019/20.

## Performance Improvement Framework progress

In 2017, an external Performance Improvement Framework assessment was undertaken. This assessment endorsed Crown Law's strategic direction and identified five performance challenges that need to be tackled to ensure we achieve our outcomes.

Over the past 3 years we have made good progress in meeting the challenges identified.

### Integrated operating model review

Following on from an integrated operating model review, a new System Leadership Group (SLG) was established in November 2019 on a 2-year trial period to build on the success of the Government Legal Network and to provide enhanced system-wide leadership.

As well as continuing the focus of the former GLN team on system risk identification, network development and system capability and capacity issues, the new SLG is providing strategic one-to-many legal advice and resources.

During 2019/20, the SLG has played an important role in co-ordinating and overseeing the government's legal response to Covid-19. Further information about the SLG is found on page 15.

### Culture and behaviours

Crown Law continues to focus on our ways of working – a set of behaviours to guide our culture.

The behaviours (described on page 7) are facilitating a shift to a culture that embraces the professional value of all of the work and all of the people in the organisation with the aim to

enhance engagement levels, improve Crown Law's employment brand and enhance our efficiency, effectiveness and customer service levels.

As part of embedding the ways of working, they are discussed as part of Crown Law's staff induction and referenced in Crown Law's job descriptions.

### *Government Legal Network People Plan*

The growth of the GLN has seen a rise in collaboration amongst government legal leaders to manage issues and also a rise in system-focused lifting of capability across the GLN – with greater collaboration around information sharing, professional development, risk management and early-in-career programmes providing significant benefits to the Crown. However, there is still significant room to make better use of the GLN's capability and resources and enhance the opportunities for government lawyers to progress and build their careers.

The GLN developed and launched a People Plan in 2017/18.

The People Plan contains 16 projects that will be prioritised and implemented over the medium term. Several of these projects have been progressed in 2019/20. Refer to page 16 for further details.

### *Systems and software*

We have continued to invest in and enhance systems, software applications and supporting processes.

We have implemented Microsoft Teams and other infrastructure to enable the organisation to work remotely. This was a significant development, and during periods when the country was at Alert Levels 4 and 3 as part of the Covid-19 response, Crown Law was able to continue working fully remotely, with counsel even able to appear before the court from their own homes.

In December 2019, we initiated a review of Crown Law's Legal Matter Management and Financial Management Information Systems to ensure that they are fit for purpose and support best-practice processes. This review consists of four phases: discovery, procurement, implementation and review. The discovery phase was completed in July 2020. The whole review is expected to be completed in 2021/22.

A review of Crown Law's operational services was completed in July 2019 to design and commence implementation of an improvement roadmap for the Operational Services Group. The review resulted in the establishment of a 2-year programme of work that looks to deliver prioritised business improvements (including a new structure, workflow design, process improvement, people capability, culture and business partnering) across legal support and business services to improve both the quality of our outputs and the engagement of our people.

### *People and capability*

To achieve our strategic outcomes and goals, we need our people to be engaged and working collaboratively with a diverse range of views and be comfortable communicating and considering different perspectives. This will help us continue to deliver excellent legal advice and services that are relevant and valued both by our customers and New Zealand. We are committed to building and investing in such a workforce.

We also have a strong commitment to the health and safety of staff (including contractors and other service providers), making sure all staff feel safe and well.

### *Equality, diversity and inclusion*

Crown Law is less ethnically diverse compared to other government agencies and the general population. As at 30 June 2020, Crown Law's ethnic staff profile included:

- Māori – 7.8% (2018/19: 8.2%);
- Asian – 7.8% (2018/19: 7.6%); and
- Pasifika – 3.9% (2018/19: 2.2%).

Crown Law continues to provide te reo Māori training for staff and support other initiatives such as a waiata group and tikanga support for the Solicitor-General and various legal teams. We appreciate that broadening these initiatives is a necessary focus as we execute our People Plan and implement our workforce strategy. While we still have further to go, the quality and capability of our leaders and staff and our commitment to a diverse and inclusive workforce provides a solid foundation.

### *Improving the gender pay gap*

Crown Law has representation of women in all levels of the organisation, and 50% of our legal managers are female. As at 30 June 2020, our gender pay gap was 15.5% compared with 23.5% as at 30 June 2019. That gap is determined by adding all of the salaries and comparing the men's total against the women's total.

The primary driver of this gender pay gap is Crown Law's dual workforce: legal and administrative. Administration roles are generally lower paid than legal roles and are predominantly undertaken by women. Our legal roles are undertaken by a more even mix of men and women. When we compare the pay of men and women undertaking the same roles, the gender pay gap for each role is minimal, and for several roles, the average pay for women is higher than the average pay for men.

We continue to work to remove any gender bias from appointment, performance, promotion and remuneration decisions. This year, we negotiated a new collective agreement with the Public Service Association (PSA), which included, for the first time, a remuneration framework, providing more transparency on our interim remuneration approach. In April 2020, we established a joint remuneration working party (including representatives from the PSA and Crown Law) to develop a new step-based remuneration system. The new system will help to eliminate bias in starting salaries and help to ensure that people are appointed at the right level based on their level of competence.

Other goals and actions specified in our Gender Pay Gap Action Plan that we intend to implement include:

- updating our flexible working arrangement policy incorporating lessons learned from our initial response to Covid-19;
- completing an upgrade of our payroll system to enhance our reporting and analytics on our workforce diversity remuneration information; and
- developing a strategic diversity and inclusion plan.

Crown Law is also a party to the Gender Equitable Engagement and Instruction Policy promoted by the New Zealand Law Society and New Zealand

Bar Association. A key objective of the policy is that, by 1 December 2018, policy adopters will use reasonable endeavours to have women lawyers with relevant expertise take a lead on at least 30% of court proceedings, arbitral proceedings and major regulator investigations.

For the year ended 30 June 2020, Crown Law had engaged and instructed women barristers 37% (2018/19: 44%) of the time compared with their male counterparts, and on a dollar value, this equated to 48% (2018/19: 52%) of matters briefed externally.

### *Engagement of staff*

Crown Law's workforce continues to show high levels of engagement. In an all-of-staff survey undertaken in November 2019, Crown Law achieved a 66% organisation engagement rating and a 68% people rating against sector benchmarks of 62% and 63% respectively. The Leadership Team is committed to further improving staff engagement and the culture of Crown Law, and this is supported by Crown Law's ways of working (refer to page 7).

### *Workplace health and safety*

This year, we have continued to focus on our organisation's health and safety maturity. Our health and safety approach is guided by a Health and Safety Panel consisting of a cross-section of Crown Law staff and chaired by Crown Law's Deputy Chief Executive. The panel met five times during 2019/20. The panel's role is outlined in a worker participation agreement, which sits alongside Crown Law's Health and Safety Policy and clarifies how Crown Law staff can:

- raise health and safety concerns;
- be part of making decisions that affect work health and safety; and
- offer suggestions for improving health and safety.

The two main health and safety risks that Crown Law faces are mental wellbeing and physical threats. Initiatives in place to address these risks are:

- providing resilience training to managers and staff;
- practical action plans to support and protect staff who identified a potential for increased

risk to their safety when dealing with members of the public who are angry or upset about a matter in litigation;

- additional wellbeing resources provided to staff and managers; and
- an Employee Assistance Programme (EAP).

The number of reported worksite accidents and lost-time injuries in 2019/20 was nil (2018/19: nil), and the number of staff attending EAP services in 2019/20 was 28 (2018/19: 22).

We also undertook two pulse surveys to check on the wellbeing of our staff while transitioning between alert levels in response to Covid-19. These have been an important way for leaders to check in with our staff and understand what additional support may have been needed. We provided clear communications and wellbeing resources and reviewed our Flexible Working Policy. Overall, people felt supported during a challenging time.

## ***Our partnerships***

We work with a wide range of stakeholders to help deliver our outcomes. These stakeholders include the Law Officers and State sector agencies that we represent and provide legal advice to, the network of government lawyers (Government Legal

Network) and the network of Crown Solicitors that we lead. We are also a member agency of the justice sector. For further information on how we work with our fellow agencies and networks refer to the section, *Progress against our strategic goals*, on page 14.

We also have a number of commercial partners that help ensure we continue to operate efficiently and effectively. These include Tandem Travel, Hertz, OfficeMax, Westpac Banking Corporation and our information technology providers Spark New Zealand Ltd, NTT, CCL, the Lap Top Company Ltd, Thomson Reuters Elite, and Ascender Pay Pty Ltd.

## ***Environmental impacts***

Crown Law recognises the impact that our operations have on the environment and is committed to improving our environmental sustainability. Our direct impact on the environment is driven primarily from the physical offices we occupy in Wellington and Auckland and the business travel we undertake. This year, we have started to measure and benchmark our emissions from air travel with the aim of reducing our emissions over time. In 2019/20, we recorded 164,746 kg of CO<sub>2</sub> emissions from air travel.

# OUR APPROACH TO QUALITY

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Crown Law is committed to providing high-quality legal services, and we have a range of systems, guidance, knowledge and capability to ensure the quality of our work, enabling us to be confident we are delivering value for New Zealanders. The following are a range of formal mechanisms that make sure we provide high-quality, fit-for-purpose legal services that meet agencies' varying needs and expectations.

## **Continuous professional development**

Legal staff must maintain a programme of continuous professional development, as monitored by the New Zealand Law Society.

All staff at Crown Law must participate in the performance management framework, which establishes goals that directly align to the overarching strategy of the organisation.

We also expect this framework to provide opportunities for feedback to be given and received about opportunities to improve.

We provide in-house opportunities for all staff to receive professional development and education. Committees such as the Education Committee facilitate a range of seminar series and programmes. We also encourage staff to attend relevant external training.

## **Professional standards**

The Professional Standards Committee is the internal body responsible for reviewing our professional practices and for making sure policies, guidelines, templates and resources are up to date and represent best practice.

As we provide all advice to clients on behalf of the Solicitor-General, whether written or oral, it must be provided within the framework of principles set out in policies and guidelines.

## **Peer review and consultation**

We maintain an internal policy that all written Crown Law advice must be peer reviewed. This process allows our lawyers who are drafting advice

to consult with other staff with the relevant and specific legal expertise. In practice, this process means fresh expert eyes give thorough consideration to an issue's complexity.

This peer review mechanism contributes to ensuring we deliver high-quality legal advice.

## **Litigation management planning**

Litigation management planning (LMP) enables us to effectively and efficiently commission and run a case while also increasing our prospects of success.

The LMP framework involves robust strategic planning by assigned lead counsel and strong communication with our clients and stakeholders. As with all our work, we are conscious that the outcome should be consistent with wider Crown interests.

The LMP discipline requires, at the conclusion of each case, a debrief to discuss and cement the lessons from the experience. Debriefing also helps to frame how future litigation is handled.

## **High-quality internal support**

Crown Law is supported by a range of business functions within the Strategy and Corporate Group that support the organisation to deliver on its outcomes and achieve Crown Law's vision.

## **Feedback from other agencies**

Our annual satisfaction survey offers an opportunity for other agencies to rate and comment on each factor of our service, such as timeliness and value for money. We collect both quantitative and qualitative information and ask a series of open-ended questions to help us understand what we can do to improve our legal advice and services.

Regularly communicating and providing progress updates on matters continues to be an area that we need to strengthen. That said, our overall survey rating this year was 96% (2018/19: 92%).

For further information about the results of our annual survey, please refer to page 41.

**Progress against our  
strategic goals**



## Outcome One

# DEMONSTRABLY BETTER GOVERNMENT DECISIONS

### ***Goal 1: Enable government to pursue its policy choices lawfully by providing quality legal services***

#### *What we are aiming to achieve*

This goal relates to improving the quality of the services Crown Law provides, particularly in terms of advice that is provided at the right time, is high quality and is sought after by decision makers (not just because it is Cabinet mandated). This includes Crown Law's support to the Solicitor-General's roles of authoritatively determining the Crown's view of the law and how the Crown conducts itself before the courts. Crown Law will be respected for the way in which it predicts and influences the development of the law so as to help manage risk and to take opportunities.

#### *What we have achieved this year*

In 2019/20, we have continued to support our departmental colleagues and other decision makers across the system by providing appropriate legal advice and representation and ensuring the Crown's legal risks are well managed and its interests are protected. This is demonstrated by the results of our annual satisfaction survey with 96% (2018/19: 92%) of feedback from other agencies rating our performance as good to excellent. This includes an increase in the percentage of responses rating our understanding of our colleagues' business, responsiveness, value for money, clarity of expression, timeliness, communication and trust and confidence.

Following a successful pilot, the Solicitor-General announced in July 2019 the establishment of a new System Leadership Group (SLG), which includes dedicated resource to provide system advice on a one-to-many basis. The SLG was formally established in November 2019 following the recruitment of the Deputy Chief Executive.

The SLG supports the Solicitor-General's leadership of government legal services. SLG is comprised of a Deputy Chief Executive and two teams: the System Advice Team and the GLN Programmes and Capability Team. The SLG assumed the responsibilities of the previous Government Legal

Network Team along with additional functions.

The System Advice Team is a dedicated legal team that develops strategic one-to-many legal advice products. The System Advice Team addresses a system need by delivering advice and guidance that is desirable but on which no one agency has sought specific advice. During the Covid-19 lockdown, this team supported the provision of information and co-ordination of effort among Chief Legal Advisors as well as the Solicitor-General's oversight of constitutionally significant legal powers by decision makers. The System Advice Team is now working with the Government Legal Network to:

- identify the next legal advice or guidance product; and
- review the way the Crown identifies and reports on cross-government legal risk.

One of the deliverables of the pilot project was an update of *Tē Pouārāhi The Judge Over Your Shoulder – A guide to good decision-making and the law in New Zealand*, which was published in August 2019. This year, we have also developed training materials based on *Tē Pouārāhi The Judge Over Your Shoulder*, and these have now been circulated to Chief Legal Advisors.

### ***Goal 2: Better serve the Crown by leveraging the collective strength of the Government's Legal Network***

#### *What we are aiming to achieve*

This goal relates to maximising the value of the 800+ lawyers and using the strength of the overall Government Legal Network (GLN) to increase the effectiveness of the government's legal resources.

Decision makers will be better served when the GLN can make increasing use of its shared resources and decision makers better understand the value of a high-quality legal perspective (where appropriate) at the right time (often early, but not necessarily so).

The strength of the GLN will be enhanced through the Solicitor-General's leadership of the network of government lawyers, including support by the SLG

and encouragement for decision makers to make better use of their lawyers and legal resources.

### *What we have achieved*

Originally created in 2011, the GLN is now well established and encourages cross-agency collaboration of government legal teams. In November 2019, the former GLN Team was replaced by the GLN Programmes and Capability Team and became part of the SLG, along with the System Advice Team.

During the response to Covid-19, the vision of cross-government co-ordination among legal teams was realised. Using remote technology, Chief Legal Advisors and their delegates met weekly to share information and co-ordinate effort. Information was shared rapidly, enabling input into the development of legal instruments and new legislation to support the alert levels framework.

The GLN Programmes and Capability Team also continued to provide practice group meetings and other GLN events through Microsoft Teams, and this shift from in-person meetings to videoconference technology has continued after lockdown to ensure a more connected network across the country.

The core of the SLG programme includes:

- the Legal Risk Reporting System now in its sixth year;
- He Waka Eke Noa: An Introduction to Being a Government Lawyer course;
- the GLN Summer Clerk Programme and the GLN Graduate Programme;
- legal practice group seminars and workshops;
- delivery of 3,500 to 4,000 individual continuing professional development hours;
- the GLN Online Sharepoint (a shared workspace that is accessed by lawyers in the GLN);
- a monthly GLN newsletter; and
- a fortnightly jobs and secondment update.

We also facilitated various Chief Legal Advisors forums and other events.

In addition to delivery of the core work programme, the 2019/20 year has seen the following highlights:

- Completion of the New to Government Buddy Programme People Plan Project and launch of the GLN Buddy Programme.
- Further progression of the Flexible Working Arrangements, Legal Leaders Pipeline and Enhanced Workforce Mobility (Secondments) GLN People Plan projects.
- Redesign of the Legal Risk Reporting System.
- Co-ordination of the annual Lawyers in Government Conference (held in August with 520 registrants).
- Continued demand for the GLN Summer Clerk Programme, which attracted 301 applicants.
- Creating legal advice, guidance and tools for government such as the new *Te Pouārahi The Judge Over Your Shoulder* publication and training materials.
- A wide variety of professional development activities across the GLN.

### *Looking ahead*

During the next financial year, the SLG will focus on:

- progressing People Plan projects;
- delivering the annual Lawyers in Government Conference in March 2021;
- reviewing and enhancing the GLN Online Sharepoint platform;
- completing the redesign and implementation of the Legal Risk Reporting System; and
- developing further system advice products.

### *Funding*

Goals 1 and 2 are funded through the appropriation for Legal Advice and Representation and the Government Legal Network output in the Law Officer Functions MCA. Refer to the statement of service performance on pages 33–42.



# SIGNIFICANT AND ILLUSTRATIVE LEGAL ADVICE AND REPRESENTATION MATTERS

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## Supporting the government's Covid-19 response

This year, Crown Law has played and continues to play a significant role in co-ordinating legal work to support the government's Covid-19 response. This includes:

- establishing Solicitor-General oversight of the exercise of significant and constitutionally novel powers;
- supporting the Attorney-General to develop and have enacted a bespoke legislative framework tailored to support the response, while reinforcing democratic norms;
- seconding resource into the All-of-Government Response Group to ensure key decision makers had access to timely legal advice; and
- co-ordinating lawyers across government to ensure Ministers and senior officials receive joined-up legal advice to support the multi-faceted response.

A particular highlight of this period has been the close working relationship between Crown Law and the Parliamentary Counsel Office (PCO), which has enabled a responsive approach in a rapidly changing environment. Together, we deploy and subsequently improve the quality of key regulatory tools supporting the government's response, i.e. Health Act and COVID-19 Public Health Response Act Orders. These instruments effectively didn't exist prior to 25 March 2020. They now form the backbone of the government's regulatory response to the pandemic. The current, more mature process of policy development, legislative drafting, Ministerial engagement and parliamentary oversight of these instruments builds on processes developed largely by Crown Law and PCO, co-ordinating lawyers and policy officials across almost every department of government.

We were able to step up and play these roles as the country transitioned rapidly to Alert Level 4 and with our staff working remotely, due to investments in information technology and communications infrastructure and the agility of our corporate functions. Our support staff quickly adapted their ways of working to ensure that our lawyers were well supported to lead in this new context, as well as to meet business-as-usual commitments.

## Other advice

In addition to supporting the Government's response to the Covid-19 pandemic, providing a wide range of often urgent legal advice into the system on orders, exemptions, and programmes to support businesses and the public, Crown Law also continued to provide other significant advice to government in 2019/20. Some examples include:

- legal input into various policy work streams with colleagues across agencies;
- advising on government responses to and engagement with the Inquiry into Operation Burnham, Royal Commission of Inquiry into the Attack on Christchurch Mosques and Royal Commission of Inquiry into Abuse in Care;
- advice on the Pay Equity Bill and various pay equity claims brought against government agencies; and
- ongoing compensation under the Biosecurity Act as part of the *Mycoplasma bovis* (cattle) and *Bonamia ostreae* (oysters) eradication programmes.

## Attorney-General v Strathboss Kiwifruit Ltd [2020] NZCA 98

This case is about a pathogenic bacterium (called Psa3) that was first identified in New Zealand in late 2010. Psa3 causes damage to kiwifruit vines. The plaintiffs said Psa3 arrived in a consignment of kiwifruit pollen from China and that Ministry of Agriculture and Forestry (MAF) officials had been negligent in granting an import permit for the consignment and clearing it at the border.

The first plaintiff Strathboss Kiwifruit Ltd, represents approximately 200 other people or entities that have interests in kiwifruit orchards. The second plaintiff is Seeka Ltd, which is a post-harvest operator (i.e. processes and packs kiwifruit). The plaintiffs were granted approval to bring a representative action, funded by a litigation funder, in 2015. The High Court directed that the case would be heard in two stages. The first stage would be about whether a private law duty of care was owed to the plaintiffs, whether that duty had been breached and whether that breach had caused Psa3 to arrive in New Zealand. The second stage would

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be about what loss, if any, had been suffered as a result of any breaches of duty. The loss claimed has not yet been quantified. The plaintiffs say the loss is in the hundreds of millions of dollars.

Judgment in the first stage was issued by the High Court on 27 June 2018. The High Court held that MAF officials owed a private law duty of care in exercising their functions under the Biosecurity Act 1993. This was a novel duty of care, not previously recognised in New Zealand. This duty was owed to Strathboss and those within the represented class who had property interests in kiwifruit vines, but it was not owed to Seeka, as Seeka's losses were one step removed. The High Court also held that MAF officials did not meet the standard of care required in the processes undertaken prior to granting the import permit for the kiwifruit pollen, and this had caused the Psa3 incursion in New Zealand. The High Court did not find any causative breaches at the border clearance stage.

The Crown successfully appealed to the Court of Appeal. The Court of Appeal judgment was issued on 9 April 2020. The Court of Appeal held that the statutory immunity in the Biosecurity Act applied to the relevant MAF officials and that the Crown had the benefit of this immunity. Even if the immunity did not apply, the Court of Appeal held that policy considerations (indeterminate liability and the risk of defensive regulatory decision making) negated imposing a private law duty of care. This decided the appeal in favour of the Crown. The Court of Appeal went on to consider the factual issues (in the event the judgment was appealed). The Court of Appeal said it would have agreed with the High Court's factual finding that, if there was a private law duty of care, there was a breach in respect of granting the import permit for the kiwifruit pollen, and this caused the Psa3 incursion in New Zealand.

The Supreme Court has granted leave to the plaintiffs to appeal.

### **Wai 2575 Health Services and Outcomes Kaupapa Inquiry**

In stage one of the Wai 2575 Health Services and Outcomes Kaupapa Inquiry, the Waitangi Tribunal inquired into two claims submitted

by representatives of Māori primary health organisations and Māori health providers and by the National Hauora Coalition, a national kaupapa Māori primary health organisation. Numerous other claimants appeared as interested parties. Crown Law worked with the Ministry of Health, District Health Boards and Te Puni Kōkiri to present the Crown's response to the claims. The Tribunal issued its report on stage one on 1 July 2019.

The Tribunal's report, *Hauora*, addressed the legislative framework for the primary health care system in New Zealand and the way that the system had been administered, funded and monitored by the Crown since the New Zealand Public Health and Disability Act 2000 was passed. From the start of the inquiry, the Crown acknowledged that health outcomes for Māori were inequitable and that the poor state of Māori health was unacceptable. The Tribunal made findings regarding the structure of the current primary health care system and made a combination of interim and final recommendations. One of the Tribunal's overarching recommendations was that the Crown should ensure that the legislative and policy framework of the primary health care system recognised and provided for the Treaty of Waitangi and its principles. Amongst its interim recommendations, the Tribunal recommended that the Crown commit to exploring the concept of a stand-alone Māori primary health authority and that the Crown and claimant representatives draft terms of reference in order to undertake that exploration. The Crown is currently working with the stage one claimants in respect of the interim recommendations.

The Crown and claimants are preparing for stage two of the inquiry, the first phase of which will focus on the lived experience of people with disabilities.

### ***Commissioner of Inland Revenue v Frucor Suntory New Zealand Ltd [2020] NZCA 383***

This was an appeal by the Commissioner of the High Court's decision that a convertible note arrangement under which Frucor (a New Zealand subsidiary of an international group of companies) claimed \$55 million as interest payments was not a tax avoidance arrangement.

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Under the arrangement, Frucor issued a convertible note with a face value of \$204 million to Deutsche Bank NZ repayable (at Deutsche Bank's option) by shares in 5 years' time. At the same time as entering the Note transaction, Deutsche Bank forward sold the shares to Frucor's parent company in Singapore (DAP) for \$149 million. Deutsche Bank used the \$149 million forward purchase price and \$55 million from its usual market sources to fund the purchase of the note. Over the 5-year term, Frucor made biannual coupon payments totalling \$66 million (based on the \$204 million face value of the note). The Commissioner argued that, as a matter of commercial and economic reality, the \$66 million was repayment of the \$55 million principal borrowed from Deutsche Bank, together with \$11 million interest. The remaining \$149 million from DAP in exchange for equity in 5 years' time was not deductible irrespective of the pre-agreed increment in value of the shares (to \$204 million) over the 5-year term. She accordingly denied a portion of the deductions claimed on the basis that the arrangement was a tax avoidance arrangement and imposed shortfall penalties for taking abusive tax positions in the relevant years.

The High Court determined that the arrangement did not have tax avoidance as a purpose and accordingly there was no tax shortfall.

The Court of Appeal allowed the Commissioner's appeal on tax avoidance. The Court considered it to be reasonably plain that the funding arrangement had New Zealand tax avoidance as one of its purposes or effects and this was not merely incidental to some other purpose. It noted that the High Court had incorrectly adopted an approach that left no room for a tax avoidance argument based on the commercial and economic effect of the arrangement. In that respect, the High Court failed to apply the settled principles as established by the Supreme Court in *Ben Nevis Forestry Ltd v Commissioner of Inland Revenue* [2008] NZSC 115, [2009] 2 NZLR 289.

The Court of Appeal found that the tax avoidance arrangement involved DAP (in effect) paying \$149 million to Frucor for the shares on day one but with the payment being structured to enable Frucor to claim interest deductions on \$204 million over a 5-year term. DAP's subscription for equity was

effectively repackaged as a loan from Deutsche Bank to achieve the intended tax benefits for Frucor. DAP's equity subscription was bundled with an amortising loan from Deutsche Bank in an artificial and contrived manner to enable Frucor to claim interest deductions on the loan, which were, in substance, repayments of principal and interest payable to Deutsche Bank in respect of the \$55 million it had introduced to facilitate the arrangement.

However, the Court of Appeal did not find that shortfall penalties applied, reasoning that the High Court having found for the taxpayer conclusively answered the question of whether there was substantial merit in the taxpayer's arguments. On that basis, the Court found that the statutory test in s 141B of the Tax Administration Act 1994 of whether the tax positions were "about as likely as not to be correct" had been satisfied.

Frucor has sought leave to appeal the tax avoidance finding to the Supreme Court. The Commissioner has until 21 October 2020 to seek leave to appeal on the issue of shortfall penalties.

### ***Church of Jesus Christ of Latter-Day Saints Trust Board v Commissioner of Inland Revenue* [2020] NZCA 143, (2020) 29 NZTC 24-066**

The issue before the High Court in this case was whether certain donations made by a missionary or persons connected with a missionary to a church trust were charitable gifts for the purposes of section LD 1 of the Income Tax Act 2007. The donations in question were payments to the trust by young members of the church, their parents or extended family and/or other members of their local stake. The amounts were paid as a result of the young persons' call to missionary service.

The missionary in question, Mr Coward, and the trust considered that the payments were gifts because they were gratuitous payments made to support charitable work. The Commissioner's position was that the payments were not gratuitous because they were made to meet a particular missionary's personal expenses and that the Court needed to look beyond the simple form of the arrangements.

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The Court of Appeal allowed an appeal against the High Court’s finding that payments made by missionaries or parents or grandparents of missionaries were not gifts and dismissed the Commissioner’s appeal that the payments made by the siblings or other relatives of the missionary were gifts and eligible for tax credits. The Court said that the focus should be on the legal arrangements that governed the payments and the surrounding circumstances. It was satisfied there was not a material benefit to the taxpayers from the payments and therefore it was consistent with the purpose of s LD 1 that these payments be treated as gifts. The benefits received by the taxpayer were only of an intangible spiritual or moral character.

The case remains important given the wide range of organisations that claim that payments are gifts where a benefit is returned either directly or indirectly to the payer. The Commissioner has sought leave to appeal to the Supreme Court, and a leave hearing is due to be held on 15 September 2020.

***Borrowdale v Director-General of Health & Attorney-General [2020] NZHC 2090***

Dr Borrowdale brought a judicial review proceeding to challenge the lawfulness of the government’s decision to lock down New Zealand under Alert Levels 3 and 4 in response to the Covid-19

pandemic. He alleged that the government lacked the power to lock the entire country down and that the Director-General’s power to isolate and quarantine people could only be exercised in relation to individuals. He alleged that it was unlawful for the Ministry of Business, Innovation and Employment (MBIE) to provide guidance as to what businesses were “essential” businesses that could open during Alert Level 4. He also alleged that the first 9 days under Alert Level 4 were unlawful because the government had suspended the New Zealand Bill of Rights Act 1990 without lawful authority (similar to the finding in *Fitzgerald v Muldoon*).

The Court held that the powers under the Health Act 1956 were broad enough to allow orders to be made locking down the whole country and closing all business that were not essential. The Court also held that it was not unlawful for MBIE to provide guidance as to what businesses were essential. However, the Court held that the first 9 days of lockdown (prior to the first order requiring people to stay at home and stay in their “bubbles”) were unlawful because the requirement that everybody stay home placed limits on rights affirmed by the Bill of Rights Act but were not prescribed by law because an order under the Health Act had not yet been issued.

## Outcome Two

# STRENGTHENED INFLUENCE OF THE RULE OF LAW

### **Goal 3: Increase New Zealanders' confidence in our legal system and lawfulness of decisions**

#### *What we are aiming to achieve*

At a time of increasing (international) questioning of the system of law and the quality, fairness and impartiality of the legal system, we see a need for greater emphasis on New Zealanders appreciating how the democratic system maintains credibility. This goal relates to Crown Law speaking for the rule of law. This may range from advising Ministers of the meaning of the law and constitutional boundaries and defending the judicial system and legal process to leading and contributing to policy development and public debate.

#### *What we have achieved this year*

##### *International rankings*

Crown Law contributes to increased trust in the justice system through the performance of the Law Officers' constitutional duties. To gauge the impact of Crown Law's legal work, we look at international indexes rating New Zealand's standing in matters related to justice. New Zealand is very well regarded overall.

The World Justice Project Rule of Law Index 2020 is based on a range of factors focused on the operation of democracy and the enforcement of freedoms and rights, security and justice.

In the overall Rule of Law Index, New Zealand is ranked first of the 15 (2019: 1/15) regional East Asia and Pacific countries and scores above average for countries of similar incomes. Globally, New Zealand is ranked 7/128 (2019: 8/126) when all index factors are considered. In the index's criminal justice focus overall, New Zealand is ranked 13/128 (2019: 13/126).

According to the index, New Zealand's criminal investigations system had no significant problems. The system shows confidence in both prosecutorial independence and integrity. Further details and indicators of New Zealanders' confidence in our legal system are provided on pages 23 and 24.

#### *Policy work programme*

We have continued to contribute effectively to policy work led by government agencies (mainly the justice sector) where that work has implications for the Law Officers, Crown Law and/or the Crown Solicitors.

In 2019/20, the policy function within Crown Law has contributed to a range of justice sector work programmes. Crown Law has worked closely with other justice agencies on the response to the reports and recommendations arising from the Hāpaitia te Oranga Tangata, Safe and Effective Justice initiative. This work has included participation in the Hui Paneke and the work to establish a mana ōrite partnership with Ināia Tonu Nei.

#### *Pacific Islands Law Officers' Network*

Crown Law supports the maintenance of good governance and the rule of law in the Pacific by being a member of the Pacific Islands Law Officers' Network (PILON).

We are committed to assisting legal systems in the Pacific, as shown by our significant contributions to PILON's activities and our continuing legal education of practitioners (through the Litigation Skills Programmes).

Our involvement in PILON generates goodwill and enhances New Zealand's relationships with Pacific nations. New Zealand is a longstanding member of the PILON Executive Committee.

Members of the Pacific judiciary have noted the distinct improvement in the litigation and advocacy skills of Pacific lawyers who have completed the Litigation Skills Programmes.

The expected rising standard of the legal profession in the Pacific states will help to demonstrate internationally that those states have fair, efficient and modern legal systems. This will help the states to strengthen their international trade and development.

#### *Crown Law's education role in the Pacific legal community*

The Litigation Skills Programmes are part of wider continuing legal education. In particular, they



provide more training opportunities for lawyers to develop expertise in court work. In turn, this contributes to the function of justice systems in the Pacific and the rule of law internationally.

Designed in New Zealand, the Litigation Skills Programmes are adapted from programmes developed by the US National Institute for Trial Advocacy. There are two programme levels:

- Basic level for lawyers 2–5 years in practice (running since 1996).
- Advanced level for lawyers 6–10 years in practice (first run in 2012).

### *Programmes to 2019*

In January 2015, a memorandum of understanding was signed with the Ministry of Foreign Affairs and Trade (MFAT) to provide three basic-level programmes and two advanced-level programmes over 5 years (2015–2019). The first basic-level programme was completed in Samoa at the end of 2015. The budget for the 5 years is about \$1.7 million and is funded by MFAT. Crown Law provides the co-ordination, labour and experience

to produce the programmes. The New Zealand Law Society owns the programme materials.

Unfortunately, the 2019 programme was cancelled a week before it was about to commence in November 2019 due to an outbreak of measles in the Pacific Islands.

### *Victims' Rights Act 2002*

The Victims' Rights Act 2002 ensures that the experience of victims of crime within the criminal justice system is what New Zealanders would expect of high-quality justice sector services.

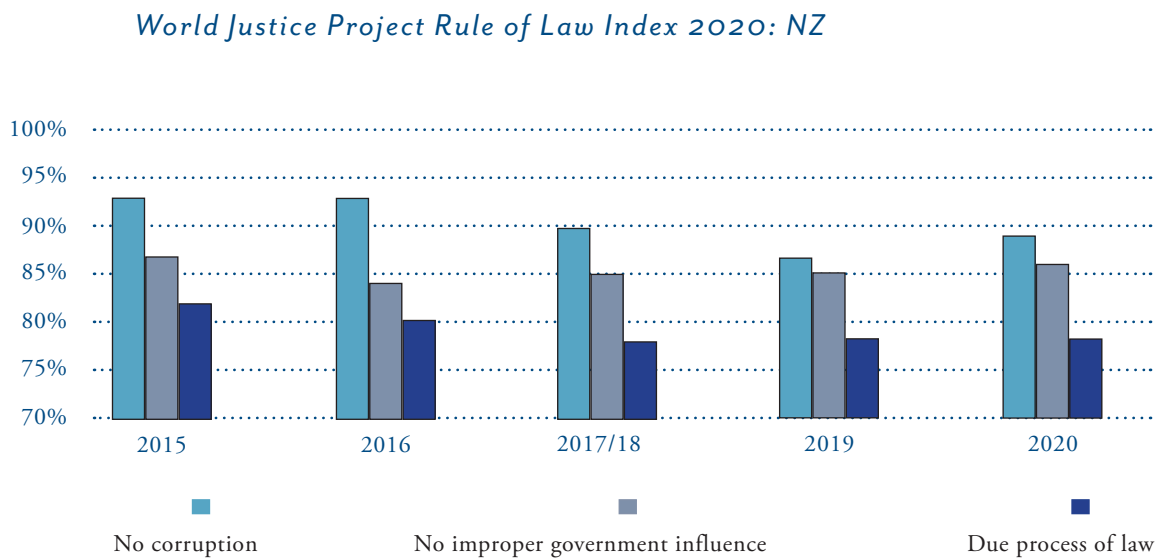
During the financial year, Crown Law received no victim complaints under section 49 of the Victims' Rights Act 2002.

### *Funding*

Goal 3 is primarily funded through the Law Officer Constitutional and Criminal Law Duties output in the Law Officer Functions MCA.

Refer to the statement of service performance on pages 33–38 for more detail.

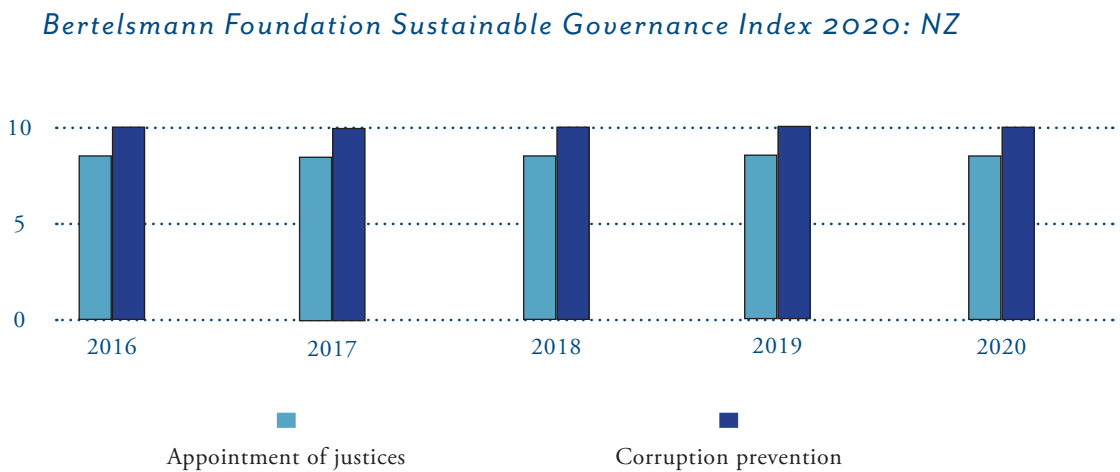
The diagram below shows our country results across three key factors of the Rule of Law Index.



New Zealand’s international ratings for the Rule of Law Index (above) and Sustainable Governance Index (below) are detailed on page 39. New Zealand’s global ranking is 7/128, and New Zealand has maintained its 1/15 ranking in the East Asia and Pacific region. The index notes there is increasing corruption globally. However, we have maintained our high ratings over the years.

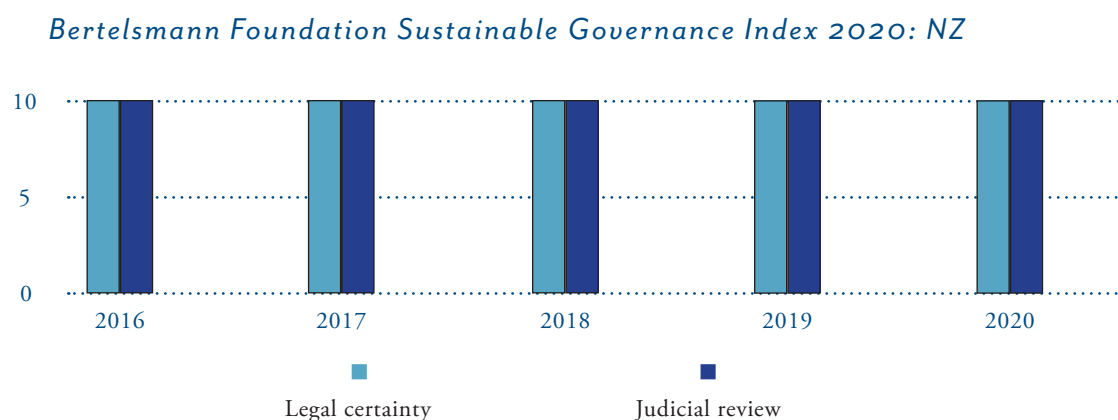
The high rating for freedom from corruption in the World Justice Project Rule of Law Index is similarly reflected in the Bertelsmann Foundation Sustainable Governance Index.

The Bertelsmann index maximum score is 10. New Zealand has returned a perfect score for corruption prevention in the past five reports, as shown in the diagram below.

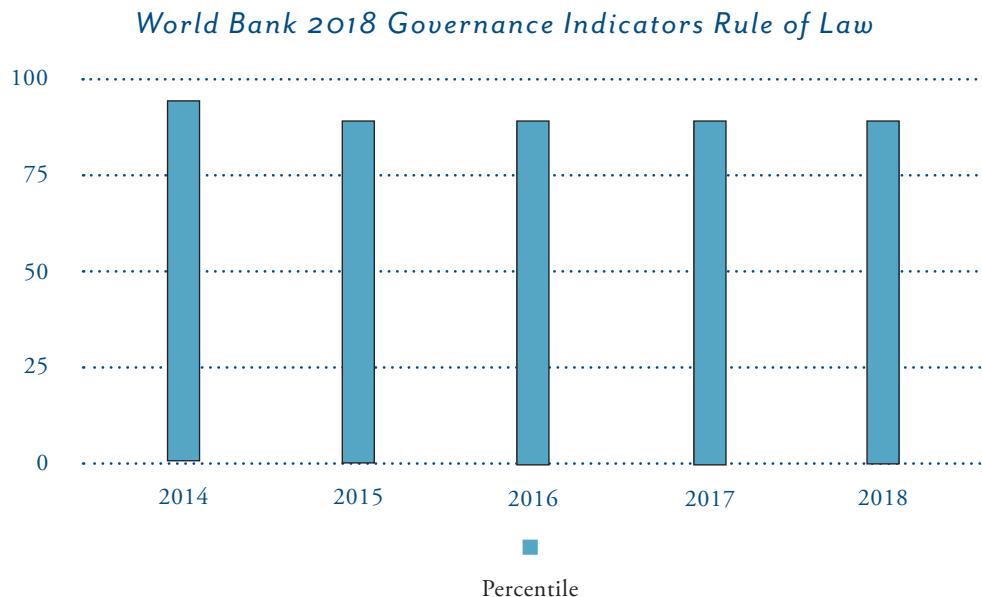


The 8/10 rating for appointment of justices is related to the potential for strengthening formal reporting on this area of governance. Otherwise, no issues were stated, reflecting the strength of New Zealand's institutions.

We also contribute to reducing legal risks to the Crown by protecting the Crown's interests and ensuring any risks are managed well. The reduction of risk is related to the following index measures, in which New Zealand scored a perfect 10 in the past five reports.



The World Bank Governance Indicators continue to rank New Zealand well for rule of law, placing New Zealand in the 98th percentile in the latest survey (for 2018) of 214 countries.



The Worldwide Governance Indicators project reports the perceptions of governance of a large number of survey respondents and expert assessments worldwide. Likewise, Transparency International's Corruption Perceptions Index 2019 placed New Zealand second of 180 countries/territories in 2019, scoring 87 of 100 around the world (2018: 87/100).

While Crown Law contributes indirectly to these results, that contribution is made through the constitutional duties of the Law Officers. These duties include reducing risk to the Crown's interests, ensuring legal certainty and prosecuting serious crime.



# SIGNIFICANT AND ILLUSTRATIVE LEGAL AND CONSTITUTIONAL MATTERS

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## ***New Zealand Council of Licensed Firearms Owners Incorporated v Minister of Police and Governor-General [2020] NZHC 1456***

In the aftermath of the 15 March 2019 terror attack in Christchurch, Parliament moved urgently to amend the Arms Act 1983 to prohibit semi-automatic firearms and authorise a buy-back scheme. At the same time, the Minister of Police was authorised to make recommendations for the prohibition of military ammunition by Order in Council. This was not to be included in the buy-back scheme. The New Zealand Council of Licensed Firearms Owners Incorporated (COLFO) sought judicial review of the Minister's decisions to define certain types of ammunition as "prohibited ammunition" in the Arms (Prohibited Ammunition) Order 2019 and to not provide for compensation for such ammunition in the Arms (Prohibited Firearms, Magazines, and Parts) Amendment Regulations 2019. COLFO also sought a declaration that the Order and Regulations deprive lawful owners of their property rights in relation to the "prohibited ammunition" and argued the Minister's recommendation was unreasonable and failed to take into account relevant considerations and took into account irrelevant ones.

The High Court found that there was a common law right to compensation when property rights are removed by the state that warranted a presumption that compensation would be provided for when a statute authorised destruction or surrender of private property but it could be defeated where Parliament had evinced a clear intention not provide compensation, and it had done so here.

Further, the recommendation not to provide compensation for the prohibited ammunition was made by the Minister in the course of Cabinet deciding the content of the legislation to go before Parliament. By enacting the Arms (Prohibited Firearms, Magazines, and Parts) Amendment Act 2019, Parliament agreed with that recommendation. Therefore, there was no statutory power of decision that could be reviewed and the applicant's challenge was substantively an impermissible challenge to an enactment.

Finally, the Minister was entitled to recommend that particular military ammunition be prohibited as part of a general desire to tighten firearms-

related controls in New Zealand, and he sufficiently addressed legitimate civilian uses. Any uncertainties in the definitions were inevitable and were addressed by protections built into the legislation, and there had been significant consultation on the definitions.

COLFO has appealed to the Court of Appeal.

## ***Kiwi Party Inc v Attorney-General [2020] NZHC 1062***

Following the Christchurch mosque attacks in March 2019, Parliament passed the Arms (Prohibited Firearms, Magazines, and Parts) Amendment Act 2019, which made most semi-automatic firearms, pump action shotguns and 10+ cartridge magazines unlawful. The Kiwi Party challenged the validity of the Act on the basis that the truncated Select Committee process was deficient and the Act violated the constitutional right to bear arms allegedly derived from the Bill of Rights 1688, the Magna Carta and the Treaty of Waitangi. The Court of Appeal held that there is no constitutional right to bear arms in New Zealand law and that the Courts cannot challenge the validity of an Act of Parliament, properly enacted. It also held that any claim based on the parliamentary process by which the Act was passed would be in breach of parliamentary privilege.

## ***Wallace v Commissioner of Police & Attorney-General.***

Steven Wallace's mother brought a civil claim against Police for compensation, alleging a breach of the right to life (s 8 NZBORA) in the Police shooting of Steven Wallace in April 2000 and a failure to properly investigate the killing. This claim was novel in that it was the first time a plaintiff has alleged that the NZBORA guarantees a right to a proper investigation.

The shooting occurred on 30 April 2000, when Constable Abbott shot and killed Steven Wallace in the main street of Waitara. This followed reported disturbances where Steven Wallace smashed many shop windows and the windscreen and side window of a Police patrol car and was wielding a baseball bat and golf club when Police confronted him. Police conducted a homicide investigation and sought Crown Law advice before deciding not to

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charge anyone in relation to the shooting. The Wallace family brought a private prosecution for murder against Constable Abbott, and he was acquitted in December 2002. Both the Coroner and IPCA inquired into the matter with the Coroner releasing his findings in 2007 and the IPCA in 2009.

The civil matter was addressed in a 6-day High Court trial in front of Justice Ellis in July 2020. The Crown submitted that the shooting was in self-defence and so should not result in civil liability.

Further, that the phrasing of s 8 (the right “not to be deprived of life”) does not necessitate the right to a proper investigation (though this is provided through other legislation). It was submitted that, should this right exist, the matter has been thoroughly investigated by a Police investigation, a High Court jury, the Coroner and the IPCA, which largely found that Police were justified in taking the steps they did.

A decision is expected by the end of 2020.

## Outcome Three

# IMPROVED CRIMINAL JUSTICE

### ***Goal 4: Improve the quality, consistency and decision making of public prosecutions***

#### *What we are aiming to achieve*

Crown Law provides Ministers and the public with confidence that the 140,000 public prosecutions undertaken annually are consistent across prosecuting authorities and there is increasing quality of these prosecutions.

#### *What we have achieved this year*

The Public Prosecutions Unit (PPU) continues to collect and review the monthly prosecution data that is being reported by all prosecuting agencies and the Ministry of Justice. The data is used to support both the in-depth and survey reviews and is provided to prosecuting agencies on request to help support internal decision making. In addition, the PPU continues to support other stakeholders within the Government Legal Network in terms of their own data collection and analysis.

Four in-depth reviews of prosecuting agencies have commenced. The final report on the first of those reviews is being finalised, whilst the most recent and largest is currently scheduled for completion by the end of the 2020/21 financial year.

Survey reviews have now also been introduced and are designed to provide more regular insights on how various agencies are performing. At this stage, four agencies have been identified for these reviews. The annual questionnaire that is distributed to 40 agencies has been updated and is ready for distribution. The elevated Covid-19 alert levels have resulted in both the agency reviews and annual questionnaire being put on hold temporarily to allow agencies to redirect resourcing to managing Covid-19 issues. It is anticipated that the reviews and annual questionnaire will recommence at a lower alert level.

A review of the in-house public prosecutors classification framework has also been completed and all changes implemented. The framework continues to be an important quality assurance tool that is designed to support agencies with the ongoing development of their prosecutors.

### ***Goal 5: Ensure the quality of Crown prosecutions***

#### *What we are aiming to achieve*

The Crown Solicitor Network continues to provide high-quality prosecutions, and Crown Law is able to give Ministers and the public confidence in the Crown Solicitor Network.

The Crown Solicitor Network comprises Crown Solicitors appointed by the Governor-General by warrant on the recommendation of the Attorney-General.

Crown Solicitors are guided by the Terms of Office, which set out the Solicitor-General's expectations of Crown Solicitors and funding arrangements.

The Terms of Office and the Solicitor-General's Prosecution Guidelines are periodically reviewed to ensure high standards of prosecutions are achieved and maintained. The guidelines are intended to ensure the principles and practices regarding prosecutions in New Zealand are underpinned by core prosecution values.

Assessing the quality of complex technical services requires professionals to apply judgement to a range of quantitative and qualitative factors to form an expert opinion about standards of quality. To achieve this, the Public Prosecutions Reporting Framework uses a three-tiered system of data gathering and analysis:

#### ***Tier 3 – Environmental feedback on Crown Solicitors***

The third tier is based on environmental feedback. Crown Solicitors carry out prosecutions in public within the framework of the justice system and as officers of the court. Within this environment, professionals and interested parties may volunteer feedback about the performance of Crown Solicitors.

To assess the validity of comments, the PPU in conjunction with the Criminal team at Crown Law engages with members of the judiciary and prosecuting agencies to gain insight into how other professionals and interested parties view the performance of Crown Solicitors.

## *Tier 2 – Annual questionnaires for Crown Solicitors*

At the second tier, Crown Solicitors complete an annual questionnaire in which they provide information about their warrant. This ensures that the firms supporting Crown Solicitors have the resources necessary to carry out the requirements of the warrant. This information also allows the PPU to compare different structures and identify opportunities for efficiencies within the Crown Solicitor Network.

## *Tier 1 – In-depth and survey-based reviews of Crown Solicitors*

The first tier generally involves undertaking a single in-depth interview-based review and four or five survey-based reviews each year. The in-depth review is designed to support Crown Solicitors in identifying areas for improvement and development. Environmental feedback, previous reviews and information identified in the analysis of monthly prosecution data may also help guide this review.

The survey-based reviews target key stakeholders and provide us with high-level feedback on a range of topics. The survey-based reviews are designed to confirm that there are no areas of serious concern as well as reveal any issues that may require further investigation. The total number of reviews undertaken each year ensures every Crown Solicitor is reviewed at least once every 3–4 years.

## *High-level statement on the quality of the Crown Solicitor Network*

The following high-level statement provides a four-step scale allowing us to describe how we regard the overall quality of the Crown Solicitor Network using the information above. The high-

level statement is based on finding and verifying emerging and actual issues to identify areas of increased risk, accountability and potential for improvement.

### **1 No serious issues identified**

Our current view is that the Crown Solicitor Network as a whole is operating sustainably<sup>1</sup> and the conduct of Crown Solicitors (and their employees representing them) is consistent with expectations and standards applicable to them as Crown Solicitors and lawyers.<sup>2</sup>

### **2 No serious issues identified; areas for improvement verified**

Our current view is that the Crown Solicitor Network as a whole is operating sustainably and the conduct of Crown Solicitors (and the employees representing them) is consistent with expectations and standards applicable to them as Crown Solicitors and lawyers. We identified and verified areas needing improvement. The Crown Solicitors are managing these areas appropriately.

### **3 Serious isolated issues identified**

Our current view is that the Crown Solicitor Network as a whole is operating sustainably. Overall, the wider conduct of Crown Solicitors (and the employees representing them) is consistent with expectations and standards applicable to them as Crown Solicitors and lawyers. We identified and verified serious isolated issues. The Crown Solicitors are managing these issues appropriately.

### **4 Serious issues affecting the wider Crown Solicitor Network identified**

We identified and verified serious issues that are impacting or potentially could impact the sustainability or service performance of the Crown Solicitor Network. The Crown Solicitors are managing these issues appropriately. They are acting to reduce the possible impact of serious risks that have emerged.

1 'Sustainably' means applying appropriate resources and doing so within the bulk funding model in the given year. This is a retrospective view and is not a financial forecast for the next financial year and out-years.

2 'Consistent' means no serious departure from the expected conduct and service performance was indicated and verified (which would then be managed through a review process or appropriate channels).

### *What we have achieved this year*

The PPU continued to undertake the monthly data collection and analysis of individual cases based on data reported by Crown Solicitors and the Ministry of Justice. This data is used to distribute approximately \$37 million of funding to Crown Solicitors and the Serious Fraud Office. The collected data has been pivotal in ensuring the Crown Solicitor network remains sustainable and was essential in supporting a business case to Treasury that resulted in an additional \$4.1 million of annual funding for the Crown Solicitor network in Budget 2020. We have also worked with the Ministry of Justice to understand the impact of increased judicial resourcing on Crown prosecutions, which resulted in an additional \$220,000 of funding being made available to the Crown Solicitor network for the 2020/21 financial year.

We have undertaken four survey-based reviews of Crown Solicitors. However, the one in-depth review that was initiated was put on hold due to Covid-19. This is scheduled to recommence at a lower alert level and a permanent Deputy Solicitor-General (Criminal) has been appointed. Finally, we continued to manage Crown Prosecutor classifications and review appointments for the Crown Panel and Serious Fraud Prosecutors Panel.

## **Goal 6: Contribute leadership to a streamlined efficient mutual assistance and extradition regime**

### *What we are aiming to achieve*

Crown Law provides a leadership role in streamlining New Zealand's mutual assistance and extradition regime. The goal is to improve the quality and increase the efficiency and timeliness of the regime.

### *What we have achieved this year*

Crown Law has continued to assist in international criminal investigations, proceedings and extradition requests.

However, due to the priorities of other key stakeholders, there is presently no desire to change

the regime, so streamlining New Zealand's mutual assistance and extradition regime is no longer considered a strategic priority of Crown Law.

## **Goal 7: Ensure the quality of the conduct of criminal appeals**

### *What we are aiming to achieve*

Crown Law continues to ensure criminal appeals are conducted in accordance with the Solicitor-General's statutory responsibilities and meet the highest standards.

### *What we have achieved this year*

We have continued to conduct criminal appeals in the High Court, Court of Appeal and Supreme Court. Appeals include those brought by the Crown or in response to appeals brought by the accused. We have also:

- provided advice on requests for Crown appeals, judicial reviews, stays of prosecution and consent to prosecute;
- made decisions on granting appeal requests from prosecuting agencies; and
- conducted Crown appeals against court-imposed sentences that are considered inadequate.

The percentage of Crown appeals concluded in favour of the Crown was 62% (2018/19: 62%). The percentage of appeals brought by the accused/defendant and concluded in favour of the defendant was 27% (2018/19: 31%). Our forecast success rate for the percentage of Crown appeals concluded in favour of the Crown is 60%, which balances the tension between the taking of an appeal because the decision is considered to be wrong and the need to take an appeal to clarify a point of law in the public interest.

### *Funding*

Goals 4–7 are funded through multiple categories in the Law Officer Functions MCA.

Refer to the statement of service performance on pages 33–38 for more detail.



# SIGNIFICANT AND ILLUSTRATIVE CRIMINAL MATTERS

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## ***Lundy v R* [2019] NZSC 152**

In 2015, Mr Lundy was convicted at a retrial for the murders of his wife and daughter in August 2000. At the trial, the Crown called evidence, based on immunohistochemistry testing, that stains present on a shirt found in Mr Lundy's car contained brain or spinal cord tissue. It also called evidence that that tissue was more likely to be human than animal, relying on messenger RNA (mRNA) analysis.

On appeal, the Court of Appeal held that the mRNA evidence should not have been admissible at Mr Lundy's trial. The Court nevertheless dismissed the appeal on the basis that, despite this error, it was sure of his guilt and the trial had been fair. In so doing, the Court applied the "proviso" to section 385(1) of the Crimes Act 1961, which permits the dismissal of an appeal, despite an error affecting the trial, if the Court considers that no substantial miscarriage of justice actually occurred.

The Supreme Court unanimously upheld the Court of Appeal's decision: admission of the mRNA evidence had not resulted in an unfair trial and the Court was satisfied beyond reasonable doubt that Mr Lundy was guilty. The Court declined to revisit the settled approach to the proviso, set out in *R v Matenga* [2009] NZSC 18, [2009] 3 NZLR 145.

## ***Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648**

The Full Court of Appeal issued revised sentencing guidelines for methamphetamine offending, revisiting those previously set out in *R v Fatu* [2006] 2 NZLR 72 (CA).

The Full Court made three significant changes to the Fatu methamphetamine guidelines:

- (i) The new sentencing bands no longer differentiate between supply, importation and manufacturing.
- (ii) The "entry points" for Fatu bands one to four are reduced. The Court's goal in doing so was to make available lower sentences for offenders at the bottom of the band: those whose role is lesser in degree and where quantities are at the lower end of the relevant range. An offender may move between the bands if they participated minimally in the offending.

- (iii) The Court split Fatu band four into two bands, creating a new band five for quantities in excess of 2 kilograms.

The new bands, compared with the Fatu bands, are as follows:

<b>Bands</b>	<b>Former: <i>Fatu</i></b>	<b>New: <i>Zhang</i></b>
Band one: < 5 grams	2–4.5 years	Community-based to 4 years
Band two: < 250 grams	3–11 years	2–9 years
Band three: < 500 grams	8–15 years	6–12 years
Band four: < 2 kilograms	10 years–life	8–16 years
Band five: > 2 kilograms	10 years–life	10 years–life

The Full Court said that, in determining an offender's position within a particular band in order to set the starting point, both quantity and role are important considerations. There are three broad role categories of "lesser", "significant" and "leading", which take into account factors such as the offender's level of responsibility and seniority within the operational chain, their motivations for offending and the extent of their financial gain.

At stage two of the sentencing exercise, personal mitigating circumstances relating to the offender are applicable to all Class A drug offending, including methamphetamine. The Court highlighted several mitigating factors that may be particularly relevant to methamphetamine offending: addiction, mental health, duress or undue influence, and social, cultural and economic deprivation. Discounts may be appropriate where such factors have impaired the offender's choice to offend and diminished their culpability. The Full Court held that addiction requires a rehabilitative approach to sentencing, and may warrant a discount of up to 30% (or even higher where its impact is akin to a serious mental health disorder.) Any discount for addiction should be based on persuasive evidence, as opposed to mere self-reporting. The Full Court also held that minimum periods of imprisonment are not to be imposed as a matter of routine or in a mechanistic way. As a general rule, lengthy minimum periods of imprisonment are to be reserved for cases involving significant commercial dealing.

**Statement of  
service performance  
and financial statements**

## ***Our performance management***

We understand the need for monitoring what we deliver and how well we deliver it, as this contributes to our understanding of how we can strengthen our value. As a provider of specialised publicly funded services and a manager of such services provided by others, we have an ongoing responsibility to ensure public money is being used responsibly to achieve effective and timely results.

Crown Law is accountable to Ministers and Parliament and is responsible for demonstrating its value for money through the effectiveness of its management and transparency in its performance. The achievement of this kind of value supports the government's priorities, justice sector outcomes and its wellbeing approach. It is dependent on a range of factors, including:

- alignment of outputs with strategic priorities;
- quantity and quality of outputs;
- outcomes/impacts;
- efficiencies and effectiveness in the use of resources and processes implemented;
- assessment and management of risk;
- protection of public assets;
- compliance with authorities, legislation and Parliament; and
- planning to meet future demand within forecast baseline funding.

Taking the report as an integrated overview of these factors, we are confident Crown Law provides a high level of public value for New Zealand in providing the efficient and effective high-quality legal advice and services that are expected of Crown Law.

Our service performance for the year ended 30 June 2020 is presented on pages 33–42.

## ***Impact of Covid-19***

In March 2020, the World Health Organization designated Covid-19 as a global pandemic, which has had a significant impact on both global and local economies.

In response to the designation and the New Zealand Government's announcement that the country would move to Alert Level 3, Crown Law implemented its business continuity plan and stood up an Incident Management Team to oversee Crown Law's internal response and to enable staff to work safely and remotely. At the same time, Crown Law played a significant role in co-ordinating legal work to support the government's Covid-19 response. Refer to page 17 for further details.

Crown Law's Senior Management has assessed the impact of Covid-19 on the statement of service performance and concluded that there has been no material impact. The following key matters have been identified regarding the impact of Covid-19 on the statement of service performance:

- Six quality assurance reviews of the Crown Solicitor Network were scheduled to be conducted in 2019/20. However, only four were conducted. One of the remaining two reviews was put on hold due to Covid-19. Refer to page 37 for further details.

For further information on the impact of Covid-19 on Crown Law's financial statements, refer to the commentary on page 56.



## Appropriations

### Multi-category appropriation (MCA) – Law Officer Functions

The single overarching purpose of this appropriation is to provide for the discharge of the Law Officers' constitutional and criminal law responsibilities.

Within the MCA are appropriations for:

- Conduct of Criminal Appeals arising from Crown Prosecutions
- Government Legal Network
- Law Officer Constitutional and Criminal Law Duties
- Public Prosecution Services.

### Audited service performance

Performance measure	Actual 2018/19	Forecast 2019/20	Actual 2019/20	Comment
<i>Quality measure</i>				
The Attorney-General is satisfied with the services provided by Crown Law.	Yes	-	Yes	<p><i>As part of our year-end reporting to the Attorney-General we have sought his feedback on the performance of Crown Law and he has confirmed he is satisfied with our performance and we are meeting his expectations.</i></p> <p><i>Other indicators of our service quality include feedback from our clients.</i></p> <p><i>Refer to pages 40–41 for our client satisfaction survey results.</i></p>

Performance for this appropriation will be assessed in more detail against the service delivery measures for each individual category within the appropriation.

### Audited financial performance (MCA summary) (GST exclusive)

Actual 2019 \$000		Actual 2020 \$000	Main Estimates 2020 \$000	Supplementary Estimates 2020 \$000
<b>Revenue</b>				
47,656	Crown	49,955	49,734	49,955
319	Other	466	694	724
<b>47,975</b>	<b>Total revenue</b>	<b>50,421</b>	<b>50,428</b>	<b>50,679</b>
<b>Expenditure</b>				
<b>47,765</b>	<b>Expenditure</b>	<b>49,193</b>	<b>50,428</b>	<b>50,679</b>
<b>210</b>	<b>Net surplus/(deficit)</b>	<b>1,228</b>	<b>-</b>	<b>-</b>

## MCA output – Conduct of Criminal Appeals arising from Crown Prosecutions

**Scope** – This category is limited to conducting appeals arising from Crown prosecutions.

### Audited service performance

Performance measure	Actual 2018/19	Forecast 2019/20	Actual 2019/20	Comment
<b>Quantity</b>				
<i>New matters</i>				
Crown appeals	31	15–30	22	-
Accused appeals	638	600–650	607	-
<b>Timeliness</b>				
<i>Average hours worked per disposed case</i>				
Crown appeals	72	≤ 90	59	-
Accused appeals	31	≤ 90	31	-
<b>Quality</b>				
<i>Effectiveness</i>				
Percentage of Crown appeals concluded in favour of the Crown	62%	60% <sup>3</sup>	62%	62% = 13 allowed; 38% = 6 dismissed and 2 abandoned.
Percentage of appeals brought by the accused/defendant concluded in favour of the accused/defendant	31%	30%	27%	27% = 134 allowed, 24 allowed in part and 4 granted. 73% = 110 abandoned, 282 dismissed and 52 refused.

### Audited financial performance (GST exclusive)

Actual 2019 \$000	Actual 2020 \$000	Main Estimates 2020 \$000	Supplementary Estimates 2020 \$000
<b>Revenue</b>			
3,278 Crown	3,807	3,716	3,807
- Other	-	50	50
<b>3,278 Total revenue</b>	<b>3,807</b>	<b>3,766</b>	<b>3,857</b>
<b>Expenditure</b>			
<b>3,235 Expenditure</b>	<b>4,110</b>	<b>3,766</b>	<b>3,857</b>
<b>43 Net surplus/(deficit)</b>	<b>(303)</b>	-	-

3 Crown Law's forecast success rate (60%) balances the tension between the taking of an appeal because the decision is considered to be wrong and the need to take an appeal to clarify a point of law in the public interest.

## MCA output – Government Legal Network

**Scope** – This category is limited to developing the collective capability, effectiveness and efficiency of government lawyers.

### Audited service performance

Performance measure	Actual 2018/19	Forecast 2019/20	Actual 2019/20	Comment
<b>Quantity</b>				
<i>New matters</i>				
Number of individual CPD-compliant hours delivered annually to the GLN lawyers	4,101	3,500–4,000	3,875	-
Number of reports submitted to the Attorney-General under the GLN Legal Risk Reporting System	4	4	4	-
<b>Quality</b>				
<i>Client perceptions and service performance (%)</i>				
Chief Legal Advisors consider SLG/GLN team engagement and communication is good to excellent	86%	80%	100%	<i>Of the 27 survey recipients, 22 responded resulting in a 81% response rate.</i>
Lawyers registered on GLN Online consider GLN activities and opportunities for participation are good to excellent	84%	70%	89%	<i>Of the 1,184 survey recipients, 194 responded resulting in a 16% response rate.</i>
The Attorney-General is satisfied with the GLN Legal Risk Reporting System	Yes	Yes	Yes	-

### Audited financial performance (GST exclusive)

Actual 2019 \$000	Actual 2020 \$000	Main Estimates 2020 \$000	Supplementary Estimates 2020 \$000
<b>Revenue</b>			
885 Crown	1,002	988	1,002
85 Other	121	120	150
<b>970 Total revenue</b>	<b>1,123</b>	<b>1,108</b>	<b>1,152</b>
<b>Expenditure</b>			
<b>709 Expenditure</b>	<b>1,176</b>	<b>1,108</b>	<b>1,152</b>
<b>261 Net surplus/(deficit)</b>	<b>(53)</b>	<b>-</b>	<b>-</b>

## MCA output – Law Officer Constitutional and Criminal Law Duties

**Scope** – This category is limited to providing assistance to the Principal Law Officers in the exercise of their functions and providing advice on constitutional, criminal law, mutual assistance and extradition matters.

### Audited service performance

Performance measure	Actual 2018/19	Forecast 2019/20	Actual 2019/20	Comment
Quantity				
New matters				
Applications <sup>4</sup> processed on behalf of the Attorney-General	39	35–55	33	From year to year, the inflow of new matters may vary significantly. New matters mostly arise from circumstances external to Crown Law but in which Crown Law must subsequently become involved. In each year, as we prepare Budget documents, we consider whether there are any factors that could help us anticipate the numbers of new matters in the upcoming financial year. Such factors can include policy changes and recent events.
Advice on behalf of the Attorney-General	122	120–160	139	
Litigation on behalf of the Law Officers (Attorney-General and/or Solicitor-General)	9	15–25	6	
Criminal advice	1	5–15	1	
Judicial reviews	1	5–10	6	
Mutual assistance and extraditions	137	100–120	91	
Criminal cases (other types)	32	25–40	51	
Requests for prosecution appeals and judicial reviews	76	70–110	73	
Timeliness				
Ministerial services – proportion of responses on time				
Ministerial correspondence on time	96%	100%	97%	65 of 67 responses completed on time.
Responses to Parliamentary questions on time	100%	100%	100%	16 of 16 responses submitted to the Attorney-General's office on time.
Official Information Act 1982 and Privacy Act 1993 responses on time	97%	100%	97%	134 of 138 responses completed on time.
Average hours worked per disposed case				
Criminal advice	195	≤ 50	35	Four significant compensation claim matters were considered in 2018/19 which led to a higher average of 195 hours. In 2019/20 there were only six matters which totalled 211 hours.
Judicial reviews	6	≤ 150	23	-
Mutual assistance and extraditions	38	≤ 50	31	-
Criminal cases (other types)	11	≤ 50	11	-
Requests for prosecution appeals	18	≤ 50	19	-
Applications processed on behalf of the Attorney-General	43	≤ 50	74	-
Advice on behalf of the Attorney-General	25	≤ 50	91	-
Litigation on behalf of the Law Officers	32	≤ 75	25	-

<sup>4</sup> These include applications for second coronial inquiries, special patient reclassification, discharge of adoption orders, trust variations, interventions in respect of alleged contempt and breach of name suppression.

### Audited financial performance (GST exclusive)

Actual 2019 \$000	Actual 2020 \$000	Main Estimates 2020 \$000	Supplementary Estimates 2020 \$000
<b>Revenue</b>			
4,571 Crown	5,053	4,966	5,053
231 Other	345	504	504
<b>4,802 Total revenue</b>	<b>5,398</b>	<b>5,470</b>	<b>5,557</b>
<b>Expenditure</b>			
<b>4,831 Expenditure</b>	<b>3,812</b>	<b>5,470</b>	<b>5,557</b>
<b>(29) Net surplus/(deficit)</b>	<b>1,586</b>	<b>-</b>	<b>-</b>

### MCA output – Public Prosecution Services

**Scope** – This category is limited to the provision and supervision of a national Crown prosecution service and oversight of public prosecutions.

### Audited service performance

Performance measure	Actual 2018/19	Forecast 2019/20	Actual 2019/20	Comment
<b>Quantity</b>				
<i>New matters</i>				
New Crown prosecutions including appeals to the High Court from non-Crown prosecutions	6,807	5,000–7,000	6,842	<i>Based on data collected by the Ministry of Justice.</i>
Crown prosecutions including appeals to the High Court from non-Crown prosecutions disposed of	5,155	4,500–5,500	5,255	-
Hours of service provided	229,125	215,000–225,000	235,973	-
Number of quality assurance reviews (full network is reviewed on rotation every 3 years)	6	6 <sup>5</sup>	4	<i>Four survey reviews were conducted in the 2019/20 financial year, which ensures the full network will be able to be reviewed over a 3-year cycle.</i> <i>Two in-depth reviews were also initially considered for the 2019/20 financial year. However, due to available resourcing only one in-depth review was commenced. This review was then put on hold due to Covid-19. The timeframe for recommencing this review will be considered once a permanent Deputy Solicitor-General (Criminal) has been appointed.</i>
<b>Quality</b>				
Reviews quality assessed as exceeding or meeting expected standards	6	6 <sup>5</sup>	4	<i>The four survey reviews referred to under “number of quality assurance reviews” all met or exceeded quality standards.</i>
Improvement recommendations implemented within timeframes set greater than	-	90%	-	<i>No significant issues were identified. Warrants were provided with minor suggestions that will be considered as part of the next review cycle.</i>

5 The six reviews consist of four survey-based reviews and two interview-based reviews.

*Audited financial performance (GST exclusive)*

<b>Actual 2019 \$000</b>		<b>Actual 2020 \$000</b>	<b>Main Estimates 2020 \$000</b>	<b>Supplementary Estimates 2020 \$000</b>
<b>Revenue</b>				
<b>38,922</b>	<b>Crown</b>	<b>40,093</b>	<b>40,064</b>	<b>40,093</b>
3	Other	-	20	20
<b>38,925</b>	<b>Total revenue</b>	<b>40,093</b>	<b>40,084</b>	<b>40,113</b>
<b>Expenditure</b>				
<b>38,990</b>	<b>Expenditure</b>	<b>40,095</b>	<b>40,084</b>	<b>40,113</b>
<b>(65)</b>	<b>Net surplus/(deficit)</b>	<b>(2)</b>	<b>-</b>	<b>-</b>

In addition to the quality and quantity performance measures noted above, we also use international rankings as an indicator of our performance over time. The rankings we monitor are noted overleaf.

## Performance overview – international rankings

Indicators	Actual 2017/18	Actual 2018/19	Actual 2019/20	Comment
Focus: Increase New Zealanders’ confidence in our legal system and lawfulness of decisions				
World Justice Project Rule of Law Index: New Zealand’s:				
Criminal system is free of corruption	score 0.90	score 0.87	score 0.89	The World Justice Project Rule of Law Index provides an overview of the rule of law in a country. The index uses ratings organised around eight factors. The effectiveness of the criminal justice system is one of the factors. Within the factors are sub-components, three of which are reported here. The index is based on household and expert surveys. These results reflect the rule of law as experienced by New Zealanders.
Criminal system is free of improper government influence	score 0.85	score 0.85	score 0.86	
Due process of law and the rights of the accused	score 0.78	score 0.78	score 0.77	
Bertelsmann Foundation Sustainable Governance Indicators Status Index: New Zealand’s effectiveness in:				
Corruption prevention	score 10/10	score 10/10	score 10/10	The Sustainable Governance Indicators (SGI) 2020 report looks at 41 OECD and EU states. The focus on democracy relates to institutional and organisational democracy and participation in the political and justice systems. Within the broader theme of democracy is the focus on the rule of law. The SGI report’s key indicators for rule of law are shown in this table.
Legal certainty	score 10/10	score 10/10	score 10/10	
Judicial review	score 10/10	score 10/10	score 10/10	New Zealand was rated amongst the top (10/10) for three of the indicators. For appointment of justices, the SGI report reflected on the opportunity to strengthen regulation process in the appointment of justices (noting here that no issues were otherwise raised).
Appointment of justices	score 8/10	score 8/10	score 8/10	

## Output expense: Legal Advice and Representation

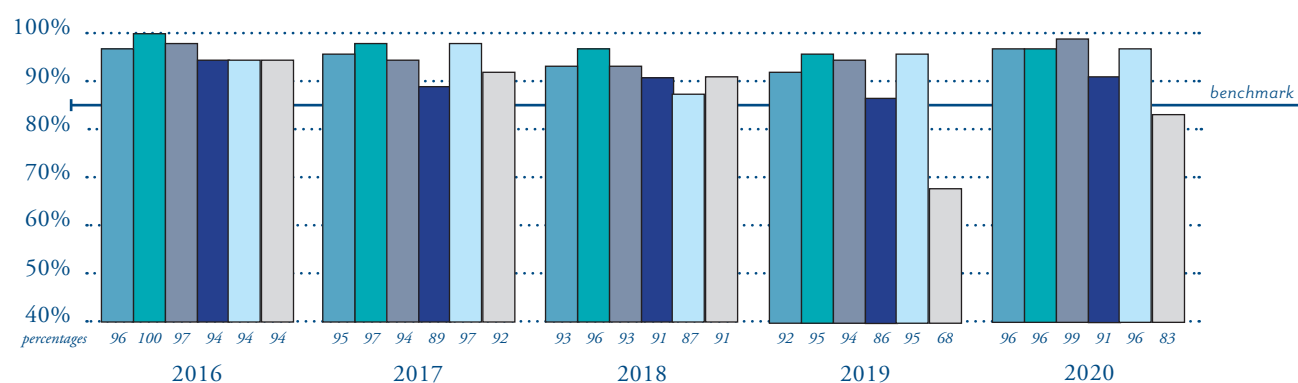
**Scope** – This appropriation is limited to providing legal advice and representation services to central government departments and Crown agencies.

### Audited service performance (no change in measures to previous year)

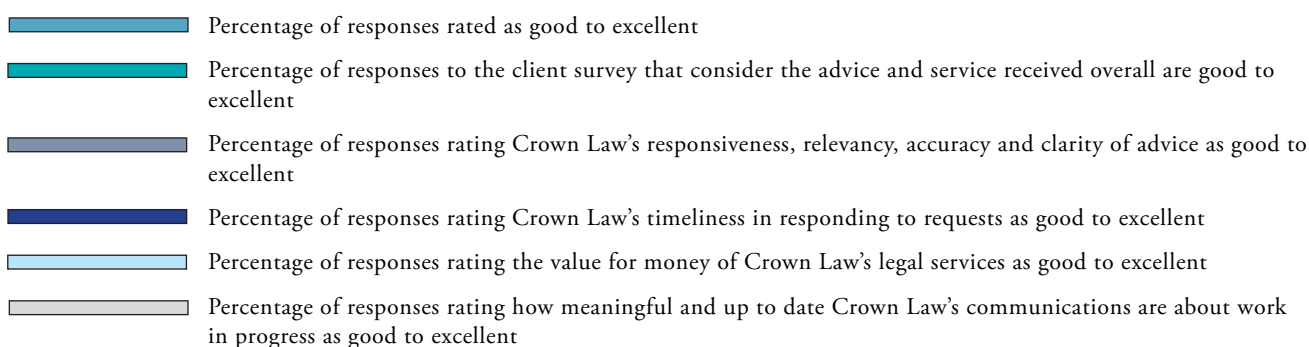
Performance measure	Actual 2018/19	Forecast 2019/20	Actual 2019/20	Comment
<b>Quantity</b>				
<i>New matters</i>				
Advice	376	380–425	378	-
Litigation	308	350–400	257	-
Judicial review	82	100–125	86	-
Claims before Waitangi Tribunal	166	35–50	34	<i>Claimants who wish to participate in kaupapa inquiries are filing amendments to existing claims instead of filing new claims. Reduced urgency applications.</i>
<b>Timeliness</b>				
<i>Average hours worked per disposed case</i>				
Advice	41	≤ 50	33	-
Litigation	135	≤ 200	100	-
Judicial review	122	≤ 100	88	-
Claims before Waitangi Tribunal	277	≤ 500	57	-
<i>Other timeliness indicators</i>				
Responses to the client survey that consider timeliness in responding to requests is good to excellent	86%	85%	91%	-
Written opinions/advice (final or draft) completed by the due date	82%	85%	79%	-
Litigation Management Plans completed by the due date	76%	80%	71%	-
<b>Quality measures (%)</b>				
Responses to the client survey that consider the advice and service received overall are good to excellent	95%	90%	96%	-
Responses to the client survey that consider the responsiveness, relevancy, accuracy and clarity of advice are good to excellent	94%	90%	99%	-
Written opinions and advice that are peer reviewed	79%	80%	69%	<i>The changing nature of the way we give advice and the impact of Covid-19 have contributed to the % decline in 2019/20.</i>
<b>Value for money</b>				
Percentage of responses to the client survey that consider the service received represents value for money is good to excellent	95%	95%	96%	-
Cost per hour of client services (i.e. the average cost per hour of providing legal advice and representation services)	\$186	≤ FY18/19 cost per hour	\$201	-



## Client survey – quality service indicators



## Percentage rated GOOD to EXCELLENT:



## Service indicators charted over time

Respondents to our survey are usually Chief and Senior Legal Advisors of government departments we worked with during the period of time to which the survey applies (the period surveyed was July 2019 to June 2020).

The survey consists of approximately 18 to 20 questions. The first 11 questions asks for a rating (excellent; very good; good; did not meet expectations; poor; unable to rate yet).

The benchmark is 85% of responses being good to excellent, and we have surpassed this. Areas of future focus are encouraging staff to proactively update our stakeholders and those who have engaged us and continuing to make sure our advice is practical and can be digested by a wider audience such as operational staff in other agencies.

## Audited financial performance (GST exclusive)

Actual 2019		Actual 2020	Main Estimates 2020	Supplementary Estimates 2020
\$000		\$000	\$000	\$000
<b>Revenue</b>				
21,403	Other	22,088	22,337	23,000
<b>Expenditure</b>				
20,305	Expenditure	23,449	22,337	23,000
1,098	Net surplus/(deficit)	(1,361)	-	-

## Other non-financial measures: Organisational health and capability

Performance measure	Est. actual 2018/19	Forecast 2019/20	Act. YTD 2019/20	Comment
<b>Capability</b>				
Gender equitable briefing (number of matters briefed to women)	44%	40%	37% <sup>6</sup>	<i>The New Zealand Law Society and New Zealand Bar Association have targeted 30% of external briefing to women lawyers.</i>
Gender equitable briefing (\$ value of matters briefed to women)	52%	40%	48%	<i>\$ value calculation based on actual costs for engagements entered into by the reporting date.</i>
Secondments of counsel into or from Crown Law and the wider Government Legal Network	17	12	11	<i>This measure represents the number of new secondment agreements entered into in 2019/20.</i>

## Crown Law Office – Capital Expenditure appropriation

**Scope** – This appropriation is limited to the purchase or development of assets by and for the use of the Crown Law Office, as authorised by section 24(1) of the Public Finance Act 1989.

### Output performance measures and standards

The expenditure was in accordance with Crown Law's capital asset management intentions in order to maintain service levels.

### Output statement for the year ended 30 June 2020

Actual 2019 \$000	Actual 2020 \$000	Main Estimates 2020 \$000	Supplementary Estimates 2020 \$000
692 Total capital expenditure	676	614	614

<sup>6</sup> These matters exclude work undertaken by Crown Solicitors that is funded by the annual fees paid by Crown Law under their Terms of Office and criminal appeals that are briefed out to Crown Solicitors where Crown Solicitors undertake and have existing knowledge of the initial prosecution.

# STATEMENT OF RESPONSIBILITY

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I am responsible, as Chief Executive of Crown Law, for:

- the preparation of Crown Law's financial statements and statements of expenses and capital expenditure and for the judgements expressed in them;
- having in place a system of internal control designed to provide reasonable assurance as to the integrity and reliability of financial reporting;
- ensuring that end-of-year performance information on each appropriation administered by Crown Law is provided in accordance with sections 19A to 19C of the Public Finance Act 1989, whether or not that information is included in this annual report; and
- the accuracy of any end-of-year performance information prepared by Crown Law, whether or not that information is included in the annual report.

In my opinion:

- the financial statements fairly reflect the financial position of Crown Law as at 30 June 2020 and its operations for the year ended on that date; and
- the forecast financial statements fairly reflect the forecast financial position of Crown Law as at 30 June 2020 and its operations for the year ending on that date.



Una Jagose QC  
Solicitor-General and Chief Executive  
9 November 2020

**Independent Auditor's Report**  
**To the readers of the Crown Law Office's annual report**  
**for the year ended 30 June 2020**

The Auditor General is the auditor of the Crown Law Office (the Department). The Auditor General has appointed me, Andrew Clark, using the staff and resources of Audit New Zealand, to carry out, on his behalf, the audit of:

- the financial statements of the Department on pages 48 to 73, that comprise the statement of financial position, statement of commitments, statement of contingent liabilities and contingent assets as at 30 June 2020, the statement of comprehensive revenue and expense, statement of changes in equity, and statement of cash flows for the year ended on that date and the notes to the financial statements that include accounting policies and other explanatory information;
- the performance information prepared by the Department for the year ended 30 June 2020 on pages 15, 16, 21 to 24, 27 to 29 and 32 to 42;
- the statements of expenses and capital expenditure of the Department for the year ended 30 June 2020 on pages 74 to 76; and
- the schedules of non departmental activities which are managed by the Department on behalf of the Crown on page 73 that comprise the schedule of trust monies for the year ended 30 June 2020.

## **Opinion**

In our opinion:

- The financial statements of the Department on pages 48 to 73:
  - present fairly, in all material respects:
    - its financial position as at 30 June 2020; and
    - its financial performance and cash flows for the year ended on that date; and
  - comply with generally accepted accounting practice in New Zealand in accordance with Public Benefit Entity Reporting Standards.
- The performance information of the Department on pages 15, 16, 21 to 24, 27 to 29 and 32 to 42:
  - presents fairly, in all material respects, for the year ended 30 June 2020:
    - what has been achieved with the appropriation; and
    - the actual expenses or capital expenditure incurred compared with the appropriated or forecast expenses or capital expenditure; and
  - complies with generally accepted accounting practice in New Zealand.
- The statements of expenses and capital expenditure of the Department on pages 74 to 76 are presented fairly, in all material respects, in accordance with the requirements of section 45A of the Public Finance Act 1989.
- The schedules of trust monies which are managed by the Department on behalf of the Crown on page 73 present fairly, in all material respects, in accordance with the Treasury Instructions.

Our audit was completed on 9 November 2020. This is the date at which our opinion is expressed.

The basis for our opinion is explained below, and we draw attention to the impact of Covid 19 on the Department and the activities it manages on behalf of the Crown. In addition, we outline the responsibilities of the Solicitor General and our responsibilities relating to the information to be audited, we comment on other information, and we explain our independence.

## **Emphasis of matter – impact of the Covid 19 pandemic**

Without modifying our opinion, we draw attention to the disclosures about the impact of the Covid 19 pandemic on the Department as set out in note 1 to the financial statements on page 56 and page 32 of the performance information.

## **Basis for our opinion**

We carried out our audit in accordance with the Auditor General's Auditing Standards, which incorporate the Professional and Ethical Standards and the International Standards on Auditing (New Zealand) issued by the New Zealand Auditing and Assurance Standards Board. Our responsibilities under those standards are further described in the Responsibilities of the auditor section of our report.

We have fulfilled our responsibilities in accordance with the Auditor General's Auditing Standards.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

## **Responsibilities of the Solicitor General for the information to be audited**

The Solicitor General is responsible on behalf of the Department for preparing:

- financial statements that present fairly the Department's financial position, financial performance, and its cash flows, and that comply with generally accepted accounting practice in New Zealand;
- performance information that presents fairly what has been achieved with each appropriation, the expenditure incurred as compared with expenditure expected to be incurred, and that complies with generally accepted accounting practice in New Zealand;
- statements of expenses and capital expenditure of the Department, that are presented fairly, in accordance with the requirements of the Public Finance Act 1989; and
- schedules of non departmental activities, in accordance with the Treasury Instructions, that present fairly those activities managed by the Department on behalf of the Crown.

The Solicitor General is responsible for such internal control as is determined is necessary to enable the preparation of the information to be audited that is free from material misstatement, whether due to fraud or error.

In preparing the information to be audited, the Solicitor General is responsible on behalf of the Department for assessing the Department's ability to continue as a going concern. The Solicitor General is also responsible for disclosing, as applicable, matters related to going concern and using the going concern basis of accounting, unless there is an intention to merge or to terminate the activities of the Department, or there is no realistic alternative but to do so.

The Solicitor General's responsibilities arise from the Public Finance Act 1989.

## **Responsibilities of the auditor for the information to be audited**

Our objectives are to obtain reasonable assurance about whether the information we audited, as a whole, is free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion.

Reasonable assurance is a high level of assurance, but is not a guarantee that an audit carried out in accordance with the Auditor General's Auditing Standards will always detect a material misstatement when it exists. Misstatements are differences or omissions of amounts or disclosures, and can arise from fraud or error. Misstatements are considered material if, individually or in the aggregate, they could reasonably be expected to influence the decisions of readers, taken on the basis of the information we audited.

For the budget information reported in the information we audited, our procedures were limited to checking that the information agreed to the relevant Estimates of Appropriation 2019/20 and Supplementary Estimates of Appropriation 2019/20 for Vote Attorney General.

We did not evaluate the security and controls over the electronic publication of the information we audited.

As part of an audit in accordance with the Auditor General's Auditing Standards, we exercise professional judgement and maintain professional scepticism throughout the audit. Also:

- We identify and assess the risks of material misstatement of the information we audited, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- We obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Department's internal control.
- We evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Solicitor General.
- We evaluate the appropriateness of the reported performance information within the Department's framework for reporting its performance.
- We conclude on the appropriateness of the use of the going concern basis of accounting by the Solicitor General and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Department's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the information we audited or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Department to cease to continue as a going concern.
- We evaluate the overall presentation, structure and content of the information we audited, including the disclosures, and whether the information we audited represents the underlying transactions and events in a manner that achieves fair presentation.

We communicate with the Solicitor General regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.



Our responsibilities arise from the Public Audit Act 2001.

## **Other information**

The Solicitor General is responsible for the other information. The other information comprises the information included on pages 3 to 76, but does not include the information we audited, and our auditor's report thereon.

Our opinion on the information we audited does not cover the other information and we do not express any form of audit opinion or assurance conclusion thereon.

Our responsibility is to read the other information. In doing so, we consider whether the other information is materially inconsistent with the information we audited or our knowledge obtained in the audit, or otherwise appears to be materially misstated. If, based on our work, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

## **Independence**

We are independent of the Department in accordance with the independence requirements of the Auditor General's Auditing Standards, which incorporate the independence requirements of Professional and Ethical Standard 1: International Code of Ethics for Assurance Practitioners issued by the New Zealand Auditing and Assurance Standards Board.

Other than in our capacity as auditor, we have no relationship with, or interests, in the Department.



Andrew Clark  
Audit New Zealand  
On behalf of the Auditor-General  
Wellington, New Zealand

# FINANCIAL STATEMENTS

## Statement of comprehensive revenue and expense

For the year ended 30 June 2020

Actual 2019 \$000	Notes	Actual 2020 \$000	Unaudited Budget 2020 \$000	Unaudited Forecast 2021 \$000
<b>Revenue</b>				
47,656	Revenue Crown 2	49,955	49,734	54,837
21,722	Other revenue 2	22,554	21,121	23,724
<b>69,378</b>	<b>Total income</b>	<b>72,509</b>	<b>70,855</b>	<b>78,561</b>
<b>Expenses</b>				
20,411	Personnel costs 3	23,308	20,954	22,929
524	Depreciation and amortisation expense 7,8	585	606	442
124	Capital charge 4	124	124	124
38,004	Crown Solicitors' fees	38,745	39,224	43,276
9,007	Other expenses 5	9,880	9,947	11,790
<b>68,070</b>	<b>Total expenses</b>	<b>72,642</b>	<b>70,855</b>	<b>78,561</b>
1,308	Surplus/(deficit)	(133)	-	-
<b>1,308</b>	<b>Total comprehensive revenue and expense</b>	<b>(133)</b>	<b>-</b>	<b>-</b>

Explanations for major variances against the original 2019/20 budget are provided in Note 17.

The accompanying notes form part of these financial statements.

## Statement of changes in equity

For the year ended 30 June 2020

Actual 2019 \$000	Notes	Actual 2020 \$000	Unaudited Budget 2020 \$000	Unaudited Forecast 2021 \$000
2,866	<b>Balance at 1 July</b>	3,988	2,866	2,151
1,308	Total comprehensive revenue and expense	(133)	-	-
(186)	Return of operating surplus to the Crown 11	(1,213)	-	-
<b>1,122</b>	<b>Movements for the year</b>	<b>(1,346)</b>	<b>-</b>	<b>-</b>
<b>3,988</b>	<b>Balance at 30 June</b>	<b>2,642</b>	<b>2,866</b>	<b>2,151</b>

The accompanying notes form part of these financial statements.

## Statement of financial position

As at 30 June 2020

Actual 2019 \$000	Notes	Actual 2020 \$000	Unaudited Budget 2020 \$000	Unaudited Forecast 2021 \$000
<b>Current assets</b>				
8,575	Cash and cash equivalents	7,157	3,827	5,875
361	Prepayments	336	350	400
4,155	Receivables	5,633	4,000	4,000
<b>13,091</b>	<b>Total current assets</b>	<b>13,126</b>	<b>8,177</b>	<b>10,275</b>
<b>Non-current assets</b>				
970	Property, plant and equipment	1,055	907	1,036
145	Intangible assets	151	293	552
<b>1,115</b>	<b>Total non-current assets</b>	<b>1,206</b>	<b>1,200</b>	<b>1,588</b>
<b>14,206</b>	<b>Total assets</b>	<b>14,332</b>	<b>9,377</b>	<b>11,863</b>
<b>Current liabilities</b>				
8,357	Payables and deferred revenue	8,312	5,151	8,112
1,478	Employee entitlements	1,941	1,160	1,400
186	Return of operating surplus	1,213	-	-
<b>10,021</b>	<b>Total current liabilities</b>	<b>11,466</b>	<b>6,311</b>	<b>9,512</b>
<b>Non-current liabilities</b>				
197	Employee entitlements	224	200	200
<b>197</b>	<b>Total non-current liabilities</b>	<b>224</b>	<b>200</b>	<b>200</b>
<b>10,218</b>	<b>Total liabilities</b>	<b>11,690</b>	<b>6,511</b>	<b>9,712</b>
<b>3,988</b>	<b>Net assets</b>	<b>2,642</b>	<b>2,866</b>	<b>2,151</b>
<b>Equity</b>				
2,063	Taxpayers' funds	2,064	2,062	2,063
1,925	Memorandum accounts	578	804	88
<b>3,988</b>	<b>Total equity</b>	<b>2,642</b>	<b>2,866</b>	<b>2,151</b>

Explanations for major variances against the original 2019/20 budget are provided in Note 17.

The accompanying notes form part of these financial statements.

## Statement of cash flows

For the year ended 30 June 2020

Actual 2019 \$000	Notes	Actual 2020 \$000	Unaudited Budget 2020 \$000	Unaudited Forecast 2021 \$000
<b>Cash flows from operating activities</b>				
<b>Cash was provided from:</b>				
47,356	Receipts from Revenue Crown	49,955	49,734	54,837
22,293	Receipts from other revenue	21,076	21,121	23,724
69,649		71,031	70,855	78,561
<b>Cash was applied to:</b>				
20,386	Payments to employees	22,739	21,004	22,929
46,697	Payments to suppliers	48,808	49,171	55,066
(257)	Goods and services tax (net)	(84)	-	-
124	Payment for capital charge	124	124	124
66,950		71,587	70,299	78,119
<b>2,699</b>	<b>Net cash flow from operating activities</b>	<b>(556)</b>	<b>556</b>	<b>442</b>
<b>Cash flows from investing activities</b>				
<b>Cash was disbursed for:</b>				
555	Purchase of property, plant and equipment	608	368	274
137	Purchase of intangible assets	68	246	525
692		676	614	799
<b>(692)</b>	<b>Net cash flow from investing activities</b>	<b>(676)</b>	<b>(614)</b>	<b>(799)</b>
<b>Cash flows from financing activities</b>				
<b>Cash was disbursed for:</b>				
11	Repayment of operating surplus	186	543	-
<b>(11)</b>	<b>Net cash flow from financing activities</b>	<b>(186)</b>	<b>(543)</b>	<b>-</b>
<b>1,996</b>	<b>Net (decrease)/increase in cash</b>	<b>(1,418)</b>	<b>(601)</b>	<b>(357)</b>
6,579	Cash at the beginning of the year	8,575	4,428	6,232
<b>8,575</b>	<b>Cash at the end of the year</b>	<b>7,157</b>	<b>3,827</b>	<b>5,875</b>

Explanations for major variances against the original 2019/20 budget are provided in Note 17.

The accompanying notes form part of these financial statements.

## Statement of cash flows (continued)

For the year ended 30 June 2020

### Reconciliation of net surplus/deficit to net cash flow from operating activities

Actual 2019 \$000		Actual 2020 \$000
<b>1,308</b>	<b>Net surplus/(deficit)</b>	<b>(133)</b>
524	Depreciation and amortisation expense	585
<b>524</b>	<b>Total non-cash items</b>	<b>585</b>
	<b>Add/(less) items classified as investing or financing activities</b>	
-	Net (gain)/loss on disposal of property, plant and equipment	-
-	<b>Add/(less) movements in statement of financial position items</b>	-
571	(Increase)/decrease in receivables	(1,478)
(9)	(Increase)/decrease in prepayments	25
280	Increase/(decrease) in payables and deferred revenue	(45)
-	Increase/(decrease) in provision	-
25	Increase/(decrease) in employee entitlements	490
<b>867</b>	<b>Total net movement in working capital items</b>	<b>(1,008)</b>
<b>2,699</b>	<b>Net cash flow from operating activities</b>	<b>(556)</b>

The accompanying notes form part of these financial statements.

## Statement of commitments

As at 30 June 2020

Commitments are future expenses and liabilities to be incurred on contracts that have been entered into as at balance date. Information on non-cancellable capital and lease commitments are reported in the statement of commitments.

Crown Law has no cancellable commitments.

### Non-cancellable operating lease commitments

Crown Law's office lease at 19 Aitken Street, Wellington, is a sub-lease from the Ministry of Justice. The lease started from 1 July 2013, and the minimum term of the lease is for a period of 6 and a half years expiring on 31 December 2019. This lease has become open from 1 January 2020, with 18 months' notice on both parties.

Crown Law also leases an office with the Serious Fraud Office (SFO) in Auckland. The lease term is from 9 November 2017 to 3 March 2023. The SFO may terminate the lease by giving Crown Law 12 months' prior written notice provided that no such notice can be given before 30 October 2018 and therefore cannot take effect before 1 November 2019. However, Crown Law may terminate the lease at any time by giving not less than 12 months' prior written notice to the SFO. Crown Law may be required to contribute up to \$15,000 should the SFO be required by the landlord to make good the premises at the time of termination of the lease as Crown Law is co-locating with the SFO. Should the lease be terminated by Crown Law before 3 March 2021, Crown Law will not be responsible for any make-good provision.

There are no restrictions placed on Crown Law by any of its leasing arrangements.

The amounts disclosed below as future commitments are based on the current rental rates.

Actual 2019 \$000		Actual 2020 \$000
	<b>Capital commitments</b>	
-	<b>There were no capital commitments as at 30 June</b>	-
	<b>Operating leases as lessee (inter-entity)</b>	
	The future aggregate minimum lease payments to be paid under non-cancellable operating leases are as follows:	
613	Not later than 1 year	1,172
147	Later than 1 year and not later than 5 years	652
-	Later than 5 years	-
<b>760</b>	<b>Total non-cancellable operating lease commitments (inter-entity)</b>	<b>1,824</b>
<b>760</b>	<b>Total commitments</b>	<b>1,824</b>

The accompanying notes form part of these financial statements.

## ***Statement of contingent liabilities and contingent assets***

*As at 30 June 2020*

### **Quantified contingent liabilities**

Crown Law has no quantified contingent liabilities as at 30 June 2020 (30 June 2019: \$27,000).

### **Unquantified contingent liabilities**

Crown Law has no unquantified contingent liabilities as at 30 June 2020 (30 June 2019: nil).

### **Contingent assets**

There are no contingent assets as at 30 June 2020 (30 June 2019: nil).

The accompanying notes form part of these financial statements.



# NOTES TO THE FINANCIAL STATEMENTS

*for the year ended 30 June 2020*

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## **Note 1: Statement of accounting policies**

### **Reporting entity**

Crown Law is a government department as defined by section 2 of the Public Finance Act 1989 (PFA) and is domiciled and operates in New Zealand. The relevant legislation governing Crown Law's operations includes the PFA. Crown Law's ultimate parent is the New Zealand Crown.

In addition, Crown Law has reported on trust monies that it administers on page 73.

The primary objective of Crown Law is to provide services to the Government of New Zealand. Crown Law does not operate to make a financial return.

Crown Law has designated itself as a public benefit entity (PBE) for the purpose of complying with generally accepted accounting practice.

The financial statements of Crown Law are for the year ended 30 June 2020 and were approved for issue by the Chief Executive of Crown Law on 9 November 2020.

### **Basis of preparation**

The financial statements of Crown Law have been prepared on a going-concern basis, and the accounting policies have been applied consistently throughout the period.

### **Statement of compliance**

The financial statements of Crown Law have been prepared in accordance with the requirements of the PFA, which include the requirement to comply with New Zealand generally accepted accounting practice (NZ GAAP) and Treasury Instructions.

These financial statements have been prepared in accordance with Tier 1 PBE accounting standards.

### **Presentation currency and rounding**

The financial statements are presented in New Zealand dollars, and all values are rounded to the nearest thousand dollars (\$000).

### **Changes in accounting policies**

There have been no changes in Crown Law's accounting policies since the date of the last audited financial statements.

### **Standards issued and not yet effective and not early adopted**

Standards and amendments issued but not yet effective that have not been early adopted:

#### *Amendments to PBE IPSAS 2 Statement of Cash Flows*

An amendment to PBE IPSAS 2 Statement of Cash Flows requires entities to provide disclosures that enable users of financial statements to evaluate changes in liabilities arising from financial activities, including both changes arising from cash flows and non-cash changes. This amendment is effective for annual periods beginning on or after 1 January 2021, with early application permitted. Crown Law does not intend to adopt the amendment.

#### *PBE IPSAS 41 Financial Instruments*

The XRB issued PBE IPSAS 41 Financial Instruments in March 2019. This standard supersedes PBE IFRS 9 Financial Instruments, which was issued as an interim standard. It is effective for reporting periods beginning on or after 1 January 2022. Although Crown Law has not assessed the effect of the new standard, it does not expect any significant changes as the requirements are similar to PBE IFRS 9.

#### *PBE FRS 48 Service Performance Reporting*

PBE FRS 48 replaces the service performance reporting requirements of PBE IPSAS 1 and is effective for periods beginning on or after 1 January 2021. Crown Law has not yet determined how application of PBE FRS 48 will affect its statement of service performance.

### **Summary of significant accounting policies**

Significant accounting policies are included in the notes to which they relate.

Significant accounting policies that do not relate to a specific note are outlined below.

#### *Cash and cash equivalents*

Cash and cash equivalents includes cash on hand, deposits held at call with banks and other short-term highly liquid investments with original maturities of 3 months or less.

#### *Provisions*

A provision is recognised for future expenditure of uncertain amount or timing when there is a present obligation (either legal or constructive) as a result of a past event, it is probable that an outflow of resources embodying economic benefits or service potential will be required to settle the obligation and a reliable estimate can be made of the amount of the obligation. Provisions are not recognised for net deficits from future operating activities.

Provisions are measured at the present value of the expenditure and are disclosed using market yields on government bonds at balance date with terms to maturity that match, as closely as possible, the estimated timing of the future cash outflows. The increase in the provision due to the passage of time is recognised as an interest expense and is included in finance costs.

#### *Goods and services tax (GST)*

All items in the financial statements and appropriation statements are stated exclusive of GST, except for receivables and payables, which are stated on a GST-inclusive basis. Where GST is not recoverable as input tax, it is recognised as part of the related asset or expense.

The net amount of GST recoverable from or payable to the Inland Revenue Department (IRD) is included as part of receivables or payables in the statement of financial position.

The net GST paid to or received from the IRD, including the GST relating to investing and financing activities, is classified as an operating cash flow in the statement of cash flows.

Commitments and contingencies are disclosed exclusive of GST.

#### *Income tax*

Crown Law is a public authority and consequently is exempt from the payment of income tax. Accordingly, no provision has been made for income tax.

## *Critical accounting estimates and assumptions*

In preparing these financial statements, Crown Law has made estimates and assumptions concerning the future. These estimates and assumptions may differ from the subsequent actual results. Estimates and assumptions are continually evaluated and are based on historical experience and other factors, including expectations of future events that are believed to be reasonable under the circumstances. The estimates and assumptions that have a significant risk of causing a material adjustment to the carrying amounts of assets and liabilities within the next financial year are discussed below.

### *Impact of Covid-19*

Certain key judgements and estimates are applied in these annual financial statements. Crown Law's Senior Management has assessed the impact of Covid-19 on these estimates and judgements and concluded that no changes are necessary. The following key matters were considered regarding the financial impact of Covid-19 on the financial statements:

- Expenses were incurred in excess of the Legal Advice and Representation appropriation to support the government's response to Covid-19. The response led to an increase in the provision of legal advice and representation and unplanned expenditure in the last quarter of the financial year as disclosed on page 74.
- No changes to the methodology or input estimates in relation to expected credit losses have been required because of continued collection levels in respect of fees earned from legal advice and representation.

### *Measuring retirement and long-service leave*

An analysis of the exposure in relation to estimates and uncertainties surrounding retirement and long-service leave liabilities is disclosed in Note 10.

## *Budget and forecast figures*

### *Basis of the budget and forecast figures*

The 2020 budget figures are for the year ended 30 June 2020 and were published in the 2018/19 annual report. They are consistent with Crown Law's best estimate financial forecast information submitted to Treasury for the Budget Economic and Fiscal Update (BEFU) for the year ended 2019/20.

The 2021 forecast figures are for the year ending 30 June 2021, which are consistent with the best estimate financial forecast information submitted to Treasury for the BEFU for the year ending 2020/21.

The forecast financial statements have been prepared as required by the PFA to communicate forecast financial information for accountability purposes.

The budget and forecast figures are unaudited and have been prepared using the accounting policies adopted in preparing these financial statements.

The 30 June 2021 forecast figures have been prepared in accordance with PBE FRS 42 Prospective Financial Statements and comply with PBE FRS 42.

The forecast financial statements were approved for issue by the Chief Executive on 30 March 2020. The Chief Executive is responsible for the forecast financial statements, including the appropriateness of the assumptions underlying them and all other required disclosures.

While Crown Law regularly updates its forecasts, updated forecast financial statements for the year ending 30 June 2021 will not be published.

#### *Significant assumptions used in preparing the forecast financials*

The forecast figures contained in these financial statements reflect Crown Law's purpose and activities and are based on a number of assumptions on what may occur during the 2020/21 year. The forecast figures have been compiled on the basis of existing government policies and ministerial expectations at the time the Main Estimates were finalised.

The main assumptions, which were adopted as at 30 March 2020, were as follows:

- Crown Law's activities and output expectations will remain substantially the same as the previous year focusing on the government's priorities.
- Personnel costs were based on 195 full-time equivalent staff positions as at 28 February 2020, which takes into account staff turnover. Remuneration rates are based on current wages and salary costs, adjusted for anticipated remuneration changes.
- Operating costs were based on historical experience and other factors that are believed to be reasonable in the circumstances and are Crown Law's best estimate of future costs that will be incurred.
- Estimated year-end information for 2019/20 was used as the opening position for the 2020/21 forecasts.

The actual financial results achieved for 30 June 2021 are likely to vary from the forecast information presented, and the variations may be material.

Since the approval of the forecasts, there has been no significant change or event that would have a material impact on the forecast figures.

## **Note 2: Revenue**

### **Accounting policy**

The specific accounting policies for significant revenue items are explained below.

#### **Revenue Crown**

Revenue from the Crown is measured based on Crown Law's funding entitlement for the reporting period.

The funding entitlement is established by Parliament when it passes the Appropriation Acts for the financial year. The amount of revenue recognised takes into account any amendments to appropriations approved in the Appropriation (Supplementary Estimates) Act for the year and certain other unconditional funding adjustments formally approved prior to balance date.

There are no conditions attached to the funding from the Crown. However, Crown Law can incur expenses only within the scope and limits of its appropriations.

The fair value of Revenue Crown has been determined to be equivalent to the funding entitlement.

#### **Revenue department and other revenue**

Crown Law derives revenue through the provision of legal services to third parties, mainly government agencies. Such revenue is recognised when earned and is reported in the financial period to which it relates.

### *Breakdown of other revenue and further information*

<b>Actual 2019 \$000</b>		<b>Actual 2020 \$000</b>
Revenue received from:		
21,673	Government departments/other government entities	22,491
45	Other	43
4	Court-awarded costs	20
<b>21,722</b>	<b>Total other revenue</b>	<b>22,554</b>

## **Note 3: Personnel costs**

### *Accounting policy*

#### *Salaries and wages*

Salaries and wages are recognised as an expense as employees provide services.

#### *Superannuation schemes*

Employer contributions to the State Sector Retirement Savings Scheme, KiwiSaver and the Government Superannuation Fund are accounted for as defined contribution superannuation schemes and are expensed in the surplus or deficit as incurred.

### *Breakdown of personnel costs*

<b>Actual 2019 \$000</b>		<b>Actual 2020 \$000</b>
19,436	Salaries and wages	21,648
89	Other personnel costs	248
861	Employer contributions to defined contribution plans	922
25	Increase/(decrease) in employee entitlements	490
<b>20,411</b>	<b>Total personnel costs</b>	<b>23,308</b>

## **Note 4: Capital charge**

### *Accounting policy*

The capital charge is recognised as an expense in the financial year to which the charge relates.

#### *Further information*

Crown Law pays a capital charge to the Crown on its equity (adjusted for memorandum accounts) as at 30 June and 31 December each year. The capital charge rate for the year ended 30 June 2020 was 6.0% (30 June 2019: 6.0%).

## Note 5: Other expenses

### Accounting policy

#### Operating leases

An operating lease is a lease that does not transfer substantially all the risks and rewards incidental to ownership of an asset.

Lease payments under an operating lease are recognised as an expense on a straight-line basis over the lease term.

Lease incentives received are recognised in the surplus or deficit as a reduction of rental expense over the lease term.

The amounts disclosed in the statement of commitments as future commitments are based on the current rental rates.

#### Other expenses

Other expenses are recognised as goods and services are received.

### Breakdown of other expenses and further information

Actual 2019 \$000	Actual 2020 \$000
73 Fees to Audit New Zealand for audit of the financial statements	74
764 Consultancy	614
1,306 Operating lease expenses (rent for office accommodation)	1,308
2,383 IT and library costs	1,954
1,643 External barrister/solicitor fees	3,118
2,838 Other expenses	2,812
<b>9,007 Total other operating expenses</b>	<b>9,880</b>

## Note 6: Receivables

### Accounting policy

Short-term receivables are recorded at the amount due, less an allowance for credit losses. Crown Law applies the simplified expected credit loss model of recognising lifetime expected credit losses for receivables.

In measuring expected credit losses, short-term receivables have been assessed on a collective basis as they possess shared credit risk characteristics. They have been grouped based on the days past due.

Short-term receivables are written off when there is no reasonable expectation of recovery.

#### Work in progress

Work in progress is determined as unbilled time and disbursements that can be recovered from clients and is measured at the lower of cost or net realisable value. Work in progress is generally invoiced in the following month.

### Breakdown of receivables and further information

Actual 2019 \$000		Actual 2020 \$000
2,400	Debtors (gross)	2,153
(86)	Less: allowance for credit losses	(9)
<b>2,314</b>	<b>Net debtors</b>	<b>2,144</b>
1,791	Work in progress (gross)	3,102
-	Less: allowance for credit losses	-
<b>1,791</b>	<b>Net work in progress</b>	<b>3,102</b>
50	Sundry debtors	387
<b>4,155</b>	<b>Total receivables</b>	<b>5,633</b>
Total receivables comprise:		
4,105	Receivables from the sale of legal advice and representation services to other government agencies at cost recovery (exchange transactions)	5,529
50	Receivables from miscellaneous expense recoveries	104

### The ageing profile of receivables at year end is detailed as follows:

	2019			2020		
	Gross \$000	Expected credit loss \$000	Net \$000	Gross \$000	Expected credit loss \$000	Net \$000
Current	2,164	(85)	2,079	1,148	(9)	1,139
1–2 months	140	-	140	172	-	172
2–3 months	56	-	56	210	-	210
3–4 months	9	-	9	111	-	111
4–6 months	16	-	16	169	-	169
6–12 months	9	-	9	292	-	292
1–2 years	6	(1)	5	49	-	49
> 2 years	-	-	-	2	-	2
<b>Total</b>	<b>2,400</b>	<b>(86)</b>	<b>2,314</b>	<b>2,153</b>	<b>(9)</b>	<b>2,144</b>

The expected credit loss rates for receivables at 30 June 2020 are based on the payment profile of revenue on credit over the prior 12 months at the measurement date and the corresponding historical credit losses experienced for that period. The historical loss rates are adjusted for current and forward-looking macroeconomic factors that might affect the recoverability of receivables. Given the short period of credit risk exposure, the impact of macroeconomic factors is not considered significant.

There have been no changes during the reporting period in the estimation techniques or significant assumptions used in measuring the loss allowance.



The allowance for credit losses at 30 June 2020 was determined as follows:

30 June 2020	Receivables past due								Total
	Current	1–2 months	2–3 months	3–4 months	4–6 months	6–12 months	1–2 years	> 2 years	
Expected credit loss rate	0.88%	0.19%	0.06%	-	0.40%	-	-	-	
Gross carrying amount (\$000)	1,148	172	210	111	169	292	49	2	2,153
Expected credit loss (\$000)	(9)	-	-	-	-	-	-	-	(9)
Impaired credit loss	-	-	-	-	-	-	-	-	-

The movement in the allowance for credit losses is as follows:

Actual 2019 \$000	Actual 2020 \$000
11 Allowance for credit losses as at 1 July calculated under PBE IPSAS 29	86
- PBE IFRS 9 expected credit loss adjustment through opening accumulated surplus/deficit	-
<b>11 Opening allowance for credit losses as at 1 July</b>	<b>86</b>
86 Increase in loss allowance made during the year	9
(11) Receivables written off during the year	(86)
<b>86 Net work in progress</b>	<b>9</b>

## Note 7: Property, plant and equipment

### Accounting policy

Property, plant and equipment consist of the following asset classes: leasehold improvements, computer hardware, furniture and fittings, office equipment.

Property, plant and equipment are measured at cost, less accumulated depreciation and impairment losses.

Individual assets or group of assets are capitalised if their cost is greater than \$1,000. The value of an individual asset that is less than \$1,000 and is part of a group of similar assets is capitalised.

### Additions

The cost of an item of property, plant and equipment is recognised as an asset if it is probable that future economic benefits or service potential associated with the item will flow to Crown Law and the cost of the item can be measured reliably.

Work in progress is recognised at cost less impairment and is not depreciated.

In most instances, an item of property, plant and equipment is recognised at its cost. Where an asset is acquired through a non-exchange transaction or for a nominal cost, it is recognised at fair value as at the date of acquisition.

### Disposals

Gains and losses on disposals are determined by comparing the proceeds with the carrying amount of the asset. Gains and losses on disposals are included in the statement of comprehensive income. When a

revalued asset is sold, the amount included in the property, plant and equipment revaluation reserve in respect of the disposed asset is transferred to taxpayers' funds.

### *Subsequent costs*

Costs incurred subsequent to initial acquisition are capitalised only when it is probable that future economic benefits or service potential associated with the item will flow to Crown Law and the cost of the item can be measured reliably.

The costs of day-to-day servicing of property, plant and equipment are recognised in the surplus or deficit as they are incurred.

### *Depreciation*

Depreciation is provided on a straight-line basis on all property, plant and equipment at rates that will write off the cost (or valuation) of the assets to their estimated residual values over their useful lives. The useful lives and associated depreciation rates of major classes of assets have been estimated as follows:

- Leasehold improvements – up to 6.5 years/up to 15.4%.
- Computer hardware – 2–5 years/20–50%.
- Furniture and fittings – 5 years/20%.
- Office equipment – 5 years/20%.

Leasehold improvements are depreciated over the unexpired period of the lease or the estimated remaining useful lives of the improvements, whichever is the shorter.

The residual value and useful life of an asset is reviewed and adjusted if applicable at each financial year end.

### *Impairment*

Crown Law does not hold any cash-generating assets. Assets are considered cash-generating where their primary objective is to generate a commercial return.

#### *Non-cash-generating assets*

Property, plant and equipment held at cost that have a finite useful life are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable.

An impairment loss is recognised for the amount by which the asset's carrying amount exceeds its recoverable service amount. The recoverable service amount is the higher of an asset's fair value less costs to sell and value in use.

Value in use is the present value of the asset's remaining service potential. Value in use is determined using an approach based on either a depreciated replacement cost approach, restoration cost approach or service units approach. The most appropriate approach used to measure value in use depends on the nature of the impairment and availability of information.

If an asset's carrying amount exceeds its recoverable service amount, the asset is regarded as impaired and the carrying amount is written down to the recoverable service amount. The total impairment loss is recognised in the surplus or deficit.

The reversal of an impairment loss is recognised in the surplus or deficit.

## Breakdown of property, plant and equipment and further information

	Leasehold improvements \$000	Office equipment \$000	Furniture and fittings \$000	Computer equipment \$000	Total \$000
<b>Cost</b>					
Balance at 1 July 2018	1,606	585	1,591	1,402	5,184
Additions	35	101	90	329	555
Disposals	-	(54)	-	(51)	(105)
<b>Balance at 30 June 2019</b>	<b>1,641</b>	<b>632</b>	<b>1,681</b>	<b>1,680</b>	<b>5,634</b>
Balance at 1 July 2019	1,641	632	1,681	1,680	5,634
Additions	162	-	171	275	608
Disposals	-	-	-	-	-
<b>Balance at 30 June 2020</b>	<b>1,803</b>	<b>632</b>	<b>1,852</b>	<b>1,955</b>	<b>6,242</b>
<b>Accumulated depreciation and impairment losses</b>					
Balance at 1 July 2018	1,233	545	1,503	974	4,255
Depreciation expense	249	8	40	217	514
Elimination on disposal	-	(54)	-	(51)	(105)
<b>Balance at 30 June 2019</b>	<b>1,482</b>	<b>499</b>	<b>1,543</b>	<b>1,140</b>	<b>4,664</b>
Balance at 1 July 2019	1,482	499	1,543	1,140	4,664
Depreciation expense	164	21	60	278	523
Elimination on disposal	-	-	-	-	-
<b>Balance at 30 June 2020</b>	<b>1,646</b>	<b>520</b>	<b>1,603</b>	<b>1,418</b>	<b>5,187</b>
<b>Carrying amount</b>					
At 30 June and 1 July 2018	373	40	88	428	929
At 30 June 2019	159	133	138	540	970
<b>At 30 June 2020</b>	<b>157</b>	<b>112</b>	<b>249</b>	<b>537</b>	<b>1,055</b>

There are no restrictions over the title of Crown Law's property, plant and equipment. No property, plant and equipment assets are pledged as security for liabilities.

## Note 8: Intangible assets

### Accounting policy

#### Software acquisition and development

Acquired computer software licences are capitalised on the basis of the costs incurred to acquire and bring to use the specific software.

Costs that are directly associated with the development of software for internal use are recognised as an intangible asset. Direct costs include the costs of services, software development employee costs and an appropriate portion of relevant overheads.

Staff training costs are recognised as an expense when incurred.

Costs associated with maintaining computer software are recognised as an expense when incurred.

Costs of software updates or upgrades are capitalised only when they increase the usefulness or value of the software.

Costs associated with development and maintenance of Crown Law's website are recognised as an expense when incurred.

### *Amortisation*

The carrying value of an intangible asset with a finite life is amortised on a straight-line basis over its useful life. Amortisation begins when the asset is available for use and ceases at the date that the asset is derecognised. The amortisation charge for each financial year is recognised in the surplus or deficit.

The useful lives and associated amortisation rates of major classes of intangible assets have been estimated as follows:

- Acquired computer software – 3 years/33%.
- Developed computer software – 3 years/33%.

### *Impairment*

Intangible assets subsequently measured at cost that have an indefinite useful life or are not yet available for use are not subject to amortisation and are tested annually for impairment.

For further details, refer to the policy for impairment of property, plant and equipment in Note 7.

## ***Critical accounting estimates and assumptions***

### *Useful life of software*

The useful life of software is determined at the time the software is acquired and brought into use and is reviewed at each reporting date for appropriateness. For computer software licences, the useful life represents management's view of the expected period over which Crown Law will receive benefits from the software but not exceeding the licence term. For internally generated software developed by Crown Law, the useful life is based on historical experience with similar systems as well as anticipation of future events that may impact the useful life, such as changes in technology.

### *Breakdown of intangible assets and further information*

Movements in the carrying value for intangible assets are as follows:

	Acquired software \$000
<b>Cost</b>	
Balance at 1 July 2018	1,934
Additions	137
Disposals	(108)
<b>Balance at 30 June 2019</b>	<b>1,963</b>
Balance at 1 July 2019	1,963
Additions	68
Disposals	-
<b>Balance at 30 June 2020</b>	<b>2,031</b>
<b>Accumulated amortisation and impairment losses</b>	
Balance at 1 July 2018	1,916
Amortisation expense	10
Elimination on disposal	(108)
Impairment losses	-
<b>Balance at 30 June 2019</b>	<b>1,818</b>
Balance at 1 July 2019	1,818
Amortisation expense	62
Elimination on disposal	-
Impairment losses	-
<b>Balance at 30 June 2020</b>	<b>1,880</b>
<b>Net carrying amount</b>	
At 30 June and 1 July 2018	18
At 30 June 2019	<b>145</b>
<b>At 30 June 2020</b>	<b>151</b>

There are no restrictions over the title of Crown Law's intangible assets. No intangible assets are pledged as security for liabilities.

## Note 9: Payables and deferred revenue

### Accounting policy

Short-term payables are recorded at the amount payable.

### Breakdown of payables and further information

Actual 2019 \$000	Actual 2020 \$000
<b>Payables and deferred revenue under exchange transactions</b>	
21 Creditors – Crown Solicitors' fees	29
435 Creditors – other	264
6,852 Other accrued expenses – unbilled Crown Solicitors' fees	6,710
455 Other accrued expenses	631
- Income in advance for cost recovered services	-
<b>7,763 Total payables and deferred revenue under exchange transactions</b>	<b>7,634</b>
<b>Payables and deferred revenue under non-exchange transactions</b>	
594 GST payable	678
<b>594 Total payables and deferred revenue under non-exchange transactions</b>	<b>678</b>
<b>8,357 Total payables and deferred revenue</b>	<b>8,312</b>

## Note 10: Employee entitlements

### Accounting policy

#### Short-term employee entitlements

Employee entitlements that are due to be settled within 12 months after the end of the reporting period in which the employee renders the related service are measured based on accrued entitlements at current rates of remuneration. These include salaries and wages accrued up to balance date, annual leave earned but not yet taken at balance date, retirement leave and long-service leave entitlements expected to be settled within 12 months.

#### Long-term employee entitlements

Employee entitlements that are due to be settled beyond 12 months after the end of the reporting period in which the employee renders the related service, such as long-service leave and retirement leave, are calculated on an actuarial basis. The calculations are based on:

- likely future entitlements accruing to staff, based on years of service, years to entitlement, the likelihood that staff will reach the point of entitlement and contractual entitlement information; and
- the present value of the estimated future cash flows.

Expected future payments are discounted using market yields on government bonds at balance date with terms to maturity that match, as closely as possible, the estimated future cash outflows for entitlements. The inflation factor is based on the expected long-term increase in remuneration for employees.

### *Presentation of employee entitlements*

Annual leave, vested long-service leave and non-vested long-service leave and retirement leave expected to be settled within 12 months of balance date are classified as a current liability. All other employee entitlements are classified as a non-current liability.

### *Critical accounting estimates and assumptions*

Annual leave is calculated using the number of days owing as at 30 June 2020.

The collective employment agreement came into effect from 22 April 2010. The collective employment agreement and individual employment contracts provide for 1 week's long-service leave after completing 10 years' service with Crown Law. A small number of employees have grandparented long-service leave arrangements prior to the above agreement.

The retirement and long-service leave from an old expired contract is maintained for three staff as at June 2020 (2019: three).

### *Long-service leave and retirement gratuities*

The measurement of the long-service leave and retirement gratuities obligations depend on a number of factors that are determined on an actuarial basis using a number of assumptions. Two key assumptions used in calculating this liability include the discount rate and the salary inflation factor.

Any changes in these assumptions will affect the carrying amount of the liability.

Expected future payments are discounted using discount rates derived from the yield curve of New Zealand government bonds. The discount rates used have maturities that match, as closely as possible, the estimated future cash outflows. Discount rates in year 1 of 0.22% (2019: 1.26%), year 2 of 0.25% (2019: 1.03%) and year 3 and beyond of 1.63% (2019: 2.23%) and a long-term salary inflation factor of 2.72% (2019: 2.92%) were used. The discount rates and salary inflation factor used are those advised by the Treasury.

### *Breakdown of employee entitlements*

<b>Actual 2019 \$000</b>	<b>Actual 2020 \$000</b>
<b>Current liabilities</b>	
176 Personnel accruals	359
1,252 Annual leave	1,528
50 Retirement leave and long-service leave	54
<b>1,478 Total current portion</b>	<b>1,941</b>
<b>Non-current liabilities</b>	
197 Retirement leave and long-service leave	224
<b>197 Total non-current portion</b>	<b>224</b>
<b>1,675 Total employee entitlements</b>	<b>2,165</b>



## Note 11: Return of operating surplus

Actual 2019 \$000	Actual 2020 \$000
1,308 Net surplus/(deficit)	(133)
(1,099) Add (surplus)/deficit of memorandum account: legal advice and representation	1,360
(23) Add (surplus)/deficit of memorandum account: processing of Queen's Counsel applications	(14)
<b>186 Provision for repayment of surplus to the Crown</b>	<b>1,213</b>

The repayment of surplus to the Crown is required to be paid by 31 October of each year.

## Note 12: Equity

### Accounting policy

Equity is the Crown's investment in Crown Law and is measured as the difference between total assets and total liabilities. Equity is disaggregated and classified as taxpayers' funds and memorandum accounts.

### Memorandum accounts

Memorandum accounts reflect the cumulative surplus/(deficit) on those departmental services provided that are intended to be fully cost recovered from third parties through fees, levies or charges. The balance of each memorandum account is expected to trend towards zero over time.

### Breakdown of equity and further information

Actual 2019 \$000	Actual 2020 \$000
<b>Taxpayers' funds</b>	
2,062 <b>Balance at 1 July</b>	2,063
1,308 Net surplus/(deficit)	(133)
(1,121) Transfer of memorandum accounts net (surplus)/deficit for the year	1,347
- Capital injections	
(186) Return of operating surplus to the Crown	(1,213)
<b>2,063 Balance at 30 June</b>	<b>2,064</b>
<b>Memorandum accounts</b>	
804 Opening balance at 1 July	1,925
21,440 Revenue	22,121
(20,319) Less expenses	(23,468)
1,121 Surplus/(deficit) for the year	(1,347)
<b>1,925 Closing balance at 30 June</b>	<b>578</b>
<b>3,988 Total equity as at 30 June</b>	<b>2,642</b>

## Breakdown of memorandum accounts

Actual 2019 \$000		Actual 2020 \$000
<b>Legal advice and representation</b>		
754	Opening balance at 1 July	1,852
21,403	Revenue	22,088
(20,305)	Less expenses	(23,449)
1,098	Surplus/(deficit) for the year	(1,361)
<b>1,852</b>	<b>Closing balance at 30 June</b>	<b>491</b>
<b>Processing of Queen's Counsel applications</b>		
50	Opening balance at 1 July	73
37	Revenue	33
(14)	Less expenses	(19)
23	Surplus/(deficit) for the year	14
<b>73</b>	<b>Closing balance at 30 June</b>	<b>87</b>
<b>Total memorandum accounts</b>		
804	Opening balance at 1 July	1,925
21,440	Revenue	22,121
(20,319)	Less expenses	(23,468)
1,121	Surplus/(deficit) for the year	(1,347)
<b>1,925</b>	<b>Closing balance at 30 June</b>	<b>578</b>

These accounts summarise financial information relating to the accumulated surpluses and deficits incurred in the provision of legal advice and representation services and processing of Queen's Counsel applications by Crown Law to third parties on a full cost recovery basis.

The balance of each memorandum account is expected to trend towards zero over a reasonable period of time, with any interim deficit being met from cash from Crown Law's statement of financial position or by seeking approval for a capital injection from the Crown. Capital injections will be repaid to the Crown by way of cash payments throughout the memorandum account cycle.

The transactions are included as part of Crown Law's operating income and expenses in the net surplus/(deficit). However, effective from 1 July 2011, these transactions have been excluded from the calculation of Crown Law's return of operating surplus (refer Note 11). The cumulative balance of the surplus/(deficit) of the memorandum accounts is recognised as a component of equity.

### Action taken to address surpluses and deficits

The fee strategy has been developed and will be regularly reviewed to ensure that the fee structure and associated revenues are in line with the forecast activities.

## Note 13: Capital management

Crown Law's capital is its equity, which comprises taxpayers' funds and memorandum accounts. Equity is represented by net assets.

Crown Law manages its revenues, expenses, assets, liabilities and general financial dealings prudently. Crown Law's equity is largely managed as a by-product of managing revenue, expenses, assets and liabilities, and compliance with the government budget processes, Treasury Instructions and the Public Finance Act.

The objective of managing Crown Law's equity is to ensure that the office effectively achieves its goals and objectives for which it has been established while remaining a going concern.

## **Note 14: Related-party information**

Crown Law is a wholly owned entity of the Crown.

Related-party disclosures have not been made for transactions with related parties that are within a normal supplier or client/recipient relationship on terms and conditions no more or less favourable than those that it is reasonable to expect Crown Law would have adopted in dealing with the party at arm's length in the same circumstances. Further, transactions with other government agencies (for example, government departments and Crown entities) are not disclosed as related-party transactions when they are consistent with the normal operating arrangements between government agencies and undertaken on the normal terms and conditions for such transactions.

### *Collectively but not individually significant transactions with government-related entities*

The Cabinet Directions for the Conduct of Crown Legal Business 2016 (Cabinet Manual Appendix C) set out the requirements for chief executives of departments to refer specified legal work to Crown Law. During the year ended 30 June 2020, Crown Law has provided legal services to departments and government entities in the amount of \$22.082 million (2019: \$21.395 million).

### *Transactions with key management personnel*

#### **Key management personnel compensation**

<b>Actual 2019 \$000</b>	<b>Actual 2020 \$000</b>
<i>Leadership Team, including the Chief Executive</i>	
1,962 Remuneration	2,120
5 Full-time equivalent staff	6

Key management personnel include the Solicitor-General and the five members of the senior management team.

The Remuneration Authority determines the Solicitor-General's remuneration annually.

Post-employment benefits are employer contributions for the State Sector Retirement Savings Scheme, KiwiSaver and the Government Superannuation Fund.

There are no related-party transactions involving key management personnel (or their close family members).

No provision has been required nor any expense recognised for impairment of receivables from related parties.

## **Note 15: Financial instruments**

### **Note 15A: Financial instrument categories**

The carrying amounts of financial assets and financial liabilities in each of the financial instrument categories are as follows:

<b>Actual 2019 \$000</b>		<b>Actual 2020 \$000</b>
<b>Cash and receivables</b>		
8,575	Cash and cash equivalents	7,157
4,155	Receivables	5,633
<b>12,730</b>	<b>Total cash and receivables</b>	<b>12,790</b>
<b>Financial liabilities measured at amortised cost</b>		
8,357	Payables	8,312
<b>8,357</b>	<b>Total payables</b>	<b>8,312</b>

### **Note 15B: Financial instrument risks**

Crown Law's activities expose it to a variety of financial instrument risks, including market risk, credit risk and liquidity risk. Crown Law has a series of policies to manage the risks associated with financial instruments and seeks to minimise exposure from financial instruments. These policies do not allow any transactions that are speculative in nature to be entered into.

#### **Market risk**

##### **Currency risk**

Currency risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in foreign exchange rates.

Crown Law occasionally purchases goods and services from overseas, such as Australia, but contracts are always signed in New Zealand currency. Therefore, Crown Law has no exposure to currency risk.

##### **Interest rate risk**

Interest rate risk is the risk that the fair value of a financial instrument will fluctuate or the cash flow from a financial instrument will fluctuate due to changes in market interest rates.

Crown Law has no interest-bearing financial instruments and, accordingly, has no exposure to interest rate risk.

##### **Credit risk**

Credit risk is the risk that a third party will default on its obligation to Crown Law, causing Crown Law to incur a loss.

In the normal course of its business, credit risk arises from receivables, deposits with banks and derivative financial instrument assets.

Crown Law is permitted to deposit funds only with Westpac (Standard & Poor's credit rating of AA-), a registered bank with high credit rating.

Crown Law does not enter into foreign exchange forward contracts.

Crown Law's maximum credit exposure for each class of financial instrument is represented by the total carrying amount of cash and cash equivalents and receivables (refer Note 6). There is no collateral held as security against these financial instruments, including those instruments that are overdue or impaired.

### **Liquidity risk**

Liquidity risk is the risk that Crown Law will encounter difficulty raising liquid funds to meet commitments as they fall due.

In meeting its liquidity requirements, Crown Law closely monitors its forecast cash requirements with expected cash drawdowns from the New Zealand Debt Management Office. Crown Law maintains a target level of available cash to meet liquidity requirements.

The table below analyses Crown Law's financial liabilities into relevant maturity groupings based on the remaining period at balance sheet date to the contractual maturity date. The amounts disclosed are the contractual undiscounted cash flows.

	Notes	Carrying amount \$000	Contractual cash flows \$000	Less than 6 months \$000	6 months to 1 year \$000	1–5 years \$000	Over 5 years \$000
<b>2020</b>							
Payables	9	8,312	8,312	8,312	-	-	-
<b>2019</b>							
Payables	9	8,357	8,357	8,357	-	-	-

Crown Law has no finance leases and derivative financial instrument liabilities.

## **Note 16: Events after balance date**

There have been no significant events after the balance date.

## **Note 17: Explanation of major variances against budget**

### **Statement of comprehensive income**

#### **Income from other revenue**

Income from other revenue was greater than budgeted by \$1.433 million because of an increase in legal advice and representation work, which was not included in the original budget.

#### **Personnel costs**

Personnel costs were greater than budgeted by \$2.354 million mainly due to the increase in FTE numbers and the annual remuneration review.

## ***Statement of financial position***

### ***Cash and cash equivalents***

Cash and cash equivalents were more than budgeted by \$3.330 million, mainly due to the 2019/20 flexi-fund payment of \$3.739 million to Crown Solicitors was received in June and paid in August 2020, but not included in the budget.

## ***Schedule of trust monies***

*For the year ended 30 June 2020*

<b>Actual 2019 \$000</b>	<b>Actual 2020 \$000</b>
<b>Crown Law Office Legal Claims Trust Account</b>	
<b>62 Balance at 1 July</b>	<b>5</b>
1,199 Contributions	112
(1,256) Distributions	(112)
1 Revenue	-
(1) Expenditure	-
<b>5 Balance at 30 June</b>	<b>5</b>

This interest-bearing account is operated to receive and pay legal claims and settlements on behalf of clients of Crown Law. In accordance with the Public Finance Act, the interest income is payable to the Crown.

## Statement of departmental unappropriated expenses and capital expenditure

For the year ended 30 June 2020

Unappropriated expenditure 2019 \$000	Approved appropriation 2020 \$000	Unappropriated expenditure 2020 \$000
<b>Vote Attorney-General</b>		
<b>Departmental output expenses</b>		
- Legal Advice and Representation	23,000	449

### Expenses and capital expenditure approved under section 26B of the PFA

Crown Law incurred expenses in excess of the Legal Advice and Representation appropriation to support the government's response to Covid-19. The response led to an increase in the provision of legal advice and representation and unplanned expenditure in the last quarter of the financial year.

The unappropriated expenditure of \$449,000 has been approved by the Minister of Finance under section 26B of the Public Finance Act.

## Appropriation statements

### Statement of cost accounting policies

Crown Law has determined the cost of outputs using the cost allocation system outlined below.

Direct costs are those costs directly attributed to an output. Indirect costs are those costs that cannot be identified in an economically feasible manner with a specific output.

Direct costs are charged directly to output expenses. Personnel costs are charged on the basis of actual time incurred. Depreciation, capital charge and other indirect costs are assigned to outputs based on the proportion of direct staff costs for each output.

There have been no changes in cost accounting policies since the date of the last audited financial statements.



## Statement of budgeted and actual expenses and capital expenditure incurred against appropriations

For the year ended 30 June 2020

Actual 2019 \$000		Actual 2020 \$000	Main Estimates 2020 \$000	Supp Estimates 2020 \$000	Appropriation Voted 2020* \$000
<b>Vote Attorney-General</b>					
<b>Appropriations for output expenses</b>					
20,305	Legal Advice and Representation	23,449	22,337	23,000	23,449
<b>47,765</b>	<b>Law Officer Functions MCA</b>	<b>49,193</b>	<b>50,428</b>	<b>50,679</b>	<b>50,679</b>
3,235	Conduct of Criminal Appeals arising from Crown Prosecutions	4,110	3,766	3,857	3,857
709	Government Legal Network	1,176	1,108	1,152	1,152
4,831	Law Officer Constitutional and Criminal Law Duties	3,812	5,470	5,557	5,557
38,990	Public Prosecution Services	40,095	40,084	40,113	40,113
<b>68,070</b>	<b>Total appropriations for output expenses</b>	<b>72,642</b>	<b>72,765</b>	<b>73,679</b>	<b>74,128</b>
<b>Appropriations for capital expenditure</b>					
692	Capital investment	676	614	614	676
<b>68,762</b>	<b>Total annual and permanent appropriations</b>	<b>73,318</b>	<b>73,379</b>	<b>74,293</b>	<b>74,804</b>

\* This includes adjustments made in the Supplementary Estimates and the additional expenditures incurred under section 26 of the Public Finance Act.

As per section 2 and section 4 of the Public Finance Act, expenditure reported should exclude remeasurements from appropriation.

There have been no remeasurements identified during the 2019/20 financial year, which implies that the actual expenditure incurred was equal to the expenditure after remeasurement.

See [pages 35–43](#) for performance information for these appropriations.

## ***Statement of departmental capital injections***

*For the year ended 30 June 2020*

<b>Actual capital injections 2019 \$000</b>	<b>Actual capital injections 2020 \$000</b>	<b>Approved appropriation 2020 \$000</b>
<b>Vote Attorney-General</b>		
- Crown Law – capital injection	-	-

## ***Statement of departmental capital injections without or in excess of authority***

*For the year ended 30 June 2020*

Crown Law did not receive any capital injections during the year without or in excess of authority (2018/19: nil).

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